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Attorneys for Lynda T. Bui, Chapter 7 Trustee		
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		
In re:		CASE NO.: 6:12-bk-31622-WJ
DAN LOUIS BERNSTEIN AND PATRICIA AILEEN BERNSTEIN,		Chapter 7
	Debtor(s).	

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: January 13, 2015	Time: 1:00 p.m.
Location: 3420 Twelfth Street, Courtroom 304, Riverside, California 92501	

Type of Sale: ☒ Public ☐ Private Last date to file objections: **December 30, 2014**

Description of Property to be Sold:

Real Property located at 1026 La Tierra Drive, San Marcos, California (“Property”)

Terms and Conditions of Sale: **See attached Motion for Order: (1) Approving the Sale of Real Property of the Estate Free and Clear of Certain Liens Pursuant to Bankruptcy Code §§ 363(b)(1) and (f), Subject to Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; (2) Approving Payment of Real Estate Commission; and (3) Granting Related Relief (“Sale Motion”).**

Proposed Sale Price: **\$305,000.00**

Overbid Procedure (If Any): **Overbids Due: January 9, 2015 by 5:00 p.m. (PST)**
See Sale Motion attached hereto for All Overbid Procedures

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

January 13, 2015 at 1:00 p.m. at 3420 Twelfth Street, Courtroom 304, Riverside, California 92501

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

Rika M. Kido, Esq.
Shulman Hodges & Bastian LLP
8105 Irvine Center Drive, Suite 600, Irvine, CA 92618
Telephone: (949) 340-3400; Facsimile: (949) 340-3000

Dated: **December 19, 2014**

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Attorneys for Lynda T. Bui,
Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION

In re
DAN LOUIS BERNSTEIN AND
PATRICIA AILEEN BERNSTEIN,
Debtors.

Case No. 6:12-bk-31622-WJ

Chapter 7

**CHAPTER 7 TRUSTEE’S MOTION FOR
ORDER:**

**(1) APPROVING THE SALE OF REAL
PROPERTY OF THE ESTATE FREE
AND CLEAR OF LIENS PURSUANT TO
BANKRUPTCY CODE §§ 363(b)(1) AND
(f), SUBJECT TO OVERBIDS,
COMBINED WITH NOTICE OF
BIDDING PROCEDURES AND
REQUEST FOR APPROVAL OF THE
BIDDING PROCEDURES UTILIZED;**

**(2) APPROVING PAYMENT OF REAL
ESTATE COMMISSION; AND**

(3) GRANTING RELATED RELIEF;

**MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF
LYNDA T. BUI IN SUPPORT THEREOF**

[Real Property located at 1026 La Tierra Drive, San
Marcos, California]

Hearing Date:

Date: January 13, 2015

Time: 1:00 P.M.

Place: Courtroom 304

3420 Twelfth Street

Riverside, CA 92501

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**TO THE HONORABLE WAYNE JOHNSON, UNITED STATES BANKRUPTCY
JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTORS AND
ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:**

I. INTRODUCTION

Lynda T. Bui, the Chapter 7 trustee (“Trustee”) for the bankruptcy estate (“Estate”) of Dan Louis Bernstein and Patricia Aileen Bernstein (“Debtors”), hereby brings this Motion for Order: (1) Approving the Sale of Real Property of the Estate Free and Clear of Certain Liens Pursuant to Bankruptcy Code §§ 363(b)(1) and (f), Subject to Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; (2) Approving Payment of Real Estate Commission; and (3) Granting Related Relief (“Sale Motion”).

The Trustee has received an offer from Walter and Marcelle Pueschel (collectively, “Buyer”) to purchase the real property located at 1026 La Tierra Drive, San Marcos, California (“Property”) for \$305,000.00, subject to overbids. The Property is a two bedroom, one story single family residence, which is currently vacant. The offer by the Buyer is the best offer that the Estate has received thus far for the Property, and is the result of negotiations between the Trustee and the Buyer for the highest and best offer. Through the sale, the Trustee is expected to generate proceeds of \$12,677.81¹ for the benefit of the Estate and its creditors. Further, in the event the purchase price is increased by a successful overbid, the estimated net proceeds will increase and provide greater distribution to creditors.

Accordingly, the Trustee believes that good cause exists to grant the Sale Motion so the Trustee does not lose this favorable business opportunity.

II. RELEVANT FACTS

A. Case Commencement

On September 19, 2012, the Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy Code.

¹ Pursuant to the information the Trustee originally received from the Debtors, the amount due on the first Deed of Trust as of \$225,619.24. Given the substantial increase in the amount due, the Trustee is trying to work out a short pay to the first Deed of Trust lienholder, which would generate additional funds for the unsecured creditors.

Lynda T. Bui is the duly appointed, qualified and acting Chapter 7 trustee in the Debtors' bankruptcy case.

B. The Property

Among the assets of the Estate is the Property, which is legally described as follows:²

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A CONDOMINIUM COMPOSED:

AN UNDIVIDED 1/10 INTEREST IN AND TO PARCELS 1, 2 AND 3 IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN ON PAGE 5690 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAND DIEGO COUNTY, MARCH 17, 1977.

EXCEPTING THEREFROM THE FOLLOWING:

(A) UNITS 1 THROUGH 10 INCLUSIVE, AS SHOWN UPON THE CERTAIN HIGHLAND CASITAS CONDOMINIUM PLAN, RECORDED OCTOBER 7, 1977 AS FILE NO. 1977-412413 OF OFFICIAL RECORDS OF SAN DIEGO COUNTY.

(B) THE EXCLUSIVE RIGHT TO POSSESSION OF ALL THOSE AREAS DESIGNATED AS PATIOS, AS SHOWN UPON THE CONDOMINIUM PLAN ABOVE REFERRED TO.

INTEREST 2:

THE EXCLUSIVE RIGHT TO POSSESSION AND OCCUPANCY OF THOSE PORTIONS OF PARCELS 1, 2 AND 3, DESCRIBED IN INTEREST 1 ABOVE, DESIGNATED AS P-2 ON THE CONDOMINIUM PLAN ABOVE REFERRED TO, AS APPURTENANT TO INTEREST 1 AND 2 ABOVE DESCRIBED.

APN: 221-480-20-02

Pursuant to Court order entered on May 29, 2014 (Docket No. 144), the Trustee was authorized to employ Richard A. Halderman, Jr. ("Broker"), to assist the Trustee in the marketing and sale of the Property.

The Trustee's Broker investigated the Property and believed that the value of the Property was between \$350,000.00 to \$360,000.00. The Property was thus listed for the sale price of \$360,000.00. The Property was listed on the Pacific West MLS and the Sandicor MLS (which covers all of Riverside, San Bernardino and San Diego counties) and advertised for sale

² The legal description for the Property is believed to be accurate but may be corrected or updated by the title company in the transfer documents as necessary to complete the proposed sale transaction.

1 since June 20, 2014. There was significant interest in the Property, including thirty-three (33)
2 inquiries and twenty (20) showings. However, while there had been significant interest in the
3 Property and multiple showings, after thirty (30) days on the market, no offers were made. As
4 such, the listing price was dropped to \$335,000.00. After an additional ninety (90) days on the
5 market at the \$335,000.00 listing price and two (2) offers for \$275,000.00 and \$280,000.00, the
6 listing price was dropped to \$318,500.00. Subsequently, there were two (2) offers made for the
7 Property, including the Buyer's offer of \$300,000.00, which the Trustee countered for
8 \$305,000.00 and the Buyer accepted.

9 The Buyer's offer that is the subject of this Sale Motion represents the best offer received
10 by the Trustee. As set forth below, the Trustee believes the sale of the Property will benefit the
11 Estate and its creditors.

12 The Debtors did not list the Property on their Bankruptcy Schedules. As of the Petition
13 Date, the Property was in the name of Lucky Ducky, LLC ("Lucky Ducky"), a company owned
14 by the Debtors and their children. Pursuant to a Settlement Agreement entered into between the
15 Trustee and the Debtors, Lucky Ducky, Shawn Caster, Danielle Bernstein, Kristina Valdovinos,
16 and Royce Copeman (collectively, the "Defendants"), the Defendants agreed to transfer their
17 interest in the Property to the Trustee upon Court approval of the settlement. On April 14, 2014,
18 the Court entered the Order Granting Motion and Approving Settlement and Compromise of
19 Disputes by and Between Chapter 7 Trustee and Dan Louis Bernstein, Patricia Aileen Bernstein,
20 Lucky Ducky, LLC, Shawn Caster, Danielle Bernstein, Kristina Valdovinos and Royce
21 Copeman, Docket No. 123 ("Settlement Order") and the Property has since been transferred to
22 the Estate by Grant Deed. A true and correct copy of the recorded Grant Deed is attached to the
23 Declaration of Lynda T. Bui ("Bui Declaration") as **Exhibit "1"**.

24 **C. Liens and Encumbrances Against the Property and Their Proposed Treatment**
25 **Through the Sale**

26 The following chart sets forth the liens and encumbrances against the Property as detailed
27 in the Preliminary Title Report dated December 2, 2014 ("Preliminary Title Report"), a copy of
28 which is attached as **Exhibit "2"** to the Bui Declaration and the proposed treatment of the liens

and encumbrances through the sale:

<u>Creditor</u>	<u>Description</u>	<u>Estimated Amount Owing</u>	<u>Treatment of Lien Through the Sale</u>
San Diego County Treasurer-Tax Collector	Real property taxes	\$418.31 (First Installment for 2014-2015 due on 12/10/14)	All outstanding real property taxes will be paid through escrow on the sale transaction.
Highland Casitas HOA	Homeowner's association fees	\$2,086.50 (as of 11/17/14)	All outstanding HOA fees will be paid through escrow on the sale transaction.
Everbank	Deed of Trust recorded on September 19, 2005 as Instrument No. 2005- 833533. Assignment of the beneficial interest under said deed of trust, assigned to E*Trade Bank c/o Specialized Loan Servicing, LLC on March 6, 2013 as Instrument No. 2013- 144923	\$247,351.40 (payoff expires on 12/31/14)	This lien will be paid through escrow on the sale of the Property. Thus, this lien will be released, discharged and terminated at the close of escrow and the Property will be sold free and clear of this lien and the lien will not attach to the sale proceeds.

All costs of sale, including escrow fees and real estate commissions will be paid at closing. In addition, to the extent that there are any outstanding real property taxes, they will be paid through the sale.

D. The Purchase Offer and Summary of the Sale Terms

The Buyer has offered to purchase the Property for \$305,000.00. The purchase price includes a deposit of \$3,000.00. Attached as **Exhibit "3"** to the Bui Declaration is a true and correct copy of the Residential Purchase Agreement and Joint Escrow Instructions and Counter Offer (collectively the "Agreement").

A summary of the Agreement's terms and highlights are discussed below, but the summary and discussion are not meant to be a complete review of every provision of the Agreement. The Agreement itself is the legally binding document the Trustee seeks approval of and, in the event of any inconsistency between the terms, provisions or effect of the Agreement and the description of it in these pleadings, the Agreement alone shall govern and not these pleadings or the descriptions herein.

In summary, the principal terms of the sale of the Property shall be as follows (the Trustee is referred to at times as the “Seller” in the following summary):

Buyer:	Walter and Marcelle Peuschel								
Purchase Price:	\$305,000.00, subject to the Bidding Procedures set forth below. \$3,000.00 to be paid as a deposit and the remainder to be paid through a loan at closing.								
Escrow:	Escrow holder will be A&A Escrow. Escrow is scheduled to close as soon as possible after entry of the Court order approving the sale transaction (“Approval Order”), but no later than the first business day after fourteen days following entry of the Approval Order.								
Buyer’s Due Diligence and Cancellation Right	Buyer shall have ten calendar days from the date of Agreement to perform, complete, and satisfy all contingencies, inspections, investigations, tests and reviews of reports, and to complete all due diligence which the Buyer desires for this purchase of the Property, including, but not limited to and performing and completing any geological, soil, structural, environmental, or other tests, inspections, and investigations desired by Buyer.								
Escrow, Title and Other Costs	All real property taxes and assessments for the current tax year shown in the current County Tax Bill shall be prorated between Seller and Buyer and charged as of the closing date to the applicable accounts of Seller and Buyer. The sale shall be free and clear of any homeowner’s association assessments and all real property taxes (other than those prorated as provided above) enforceable against the Property through the closing date of the sale. Escrow fees shall be split between Buyer and Seller in the manner customary in the County where the Property is located. Seller shall pay any real property transfer tax. Seller shall pay the cost of a Natural Hazard Disclosure Report, from a vendor selected by Seller, to be furnished to Buyer through escrow. Buyer shall pay and have sole responsibility for compliance with any requirements imposed on the Property or this sale by any governmental agency(ies), including compliance with any applicable governmental retrofit requirements. Buyer shall pay the cost of recording the deed. Buyer and Seller shall each pay their own expenses of every other type except as specifically provided in this Addendum. Seller shall not be responsible to pay any one-year home warranty plan.								
Bankruptcy Court Approval	The sale is subject to notice to creditors, approval by the Bankruptcy Court, and higher and better bids received by Seller through and including the Bankruptcy Court hearing to confirm the sale. Payment of any and all real estate brokers’ commissions is also subject to notice to creditors and approval by the Bankruptcy Court.								
Real Estate Agent Commission	Through escrow on the sale of the Property, and subject to Court approval, the Trustee shall pay compensation for real estate agent services to the Buyer’s agent and the Estate’s agent. The agents shall equally split a commission in the amount of \$18,300.00 (6% of the purchase price) ³ as follows: <table> <tr> <th><u>Agent</u></th><th><u>Commission</u></th></tr> <tr> <td>Trustee’s Broker Richard A. Halderman, Jr.</td><td>\$9,150.00</td></tr> <tr> <td>Buyer’s Broker MiYona Pagni, Pagni Real Estate</td><td>\$9,150.00</td></tr> <tr> <td>Total Commission</td><td>\$18,300.00</td></tr> </table>	<u>Agent</u>	<u>Commission</u>	Trustee’s Broker Richard A. Halderman, Jr.	\$9,150.00	Buyer’s Broker MiYona Pagni, Pagni Real Estate	\$9,150.00	Total Commission	\$18,300.00
<u>Agent</u>	<u>Commission</u>								
Trustee’s Broker Richard A. Halderman, Jr.	\$9,150.00								
Buyer’s Broker MiYona Pagni, Pagni Real Estate	\$9,150.00								
Total Commission	\$18,300.00								

³ The Trustee reserves the right to request a reduction to net the Estate additional fees. The Broker has been advised that the Court has the ultimate discretion to reduce the commission percentage as well.

Purchase Without Warranties	Buyer acknowledges and agrees that, to the maximum extent permitted by law, the sale contemplated by this Addendum is made "as-is," "where-is," and "with all faults," except as specifically provided in this Addendum. Seller and Brokers and agents herein have not made, do not make, and specifically negate and disclaim any representations, warranties, promises, covenants, Addendums, or guaranties of any kind or character whatsoever, whether express or implied, oral or written.
Trustee's Liability	The Buyer acknowledges that the Trustee is acting in her official capacity only. No personal liability shall be sought or enforced against the Trustee with regard to the Agreement, including any addendums to the Agreement, the Property, the sale of the Property, or the physical condition of the Property. In the event that the Trustee fails or refuses to complete the transaction for any reason, then the limit of the Trustee's liability is only to return any money paid to the Trustee by the Buyer, without deduction. Prior to and after the closing of escrow, the United States Bankruptcy Court shall have and retain the sole and exclusive jurisdiction over the Property and the Agreement; and all disputes arising before and after closing shall be resolved in said Court. Further, the Trustee has agreed that if a dispute arises, such dispute may initially be resolved through the Mediation Program pending in the United States Bankruptcy Court for the Central District of California.
Hold Harmless	The Buyer understands the terms and conditions of the entire purchase contract and holds the Estate and the realtors, brokers, agents, Lynda T. Bui, Trustee, and her attorneys including Shulman Hodges & Bastian LLP, agents and employees, harmless from any liabilities arising from this contract. All parties hereto further agree, jointly and severally, to pay on demand as well as to indemnify and hold Escrow harmless from and against all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of any kind or nature which in good faith, Escrow may incur or sustain in connection with or arising out of this Escrow and Escrow is hereby given a lien upon all the rights, titles and interest of each of the undersigned in all escrow papers and other property and monies deposited in this escrow, to protect the rights of escrow and to indemnify and reimburse Escrow under this Addendum. In the event this Escrow is not completed for any reason, Escrow is authorized to deduct and pay its fee, plus costs incurred from any funds on deposit.
Jurisdiction of the Bankruptcy Court	Any and all disputes which involve in any manner the Estate or Lynda T. Bui, Trustee, arising from the Agreement and/or its addendums or relating in any manner to the Property, shall be resolved only in the United States Bankruptcy Court, Central District of California.
Outstanding Real Property Taxes	To be paid by through escrow.
Free and Clear of Liens and Encumbrances	The Property shall be delivered to the Buyer free and clear of all liens and encumbrances. Any liens and interests against the Property that are not paid in full through escrow shall attach to the sale proceeds generated through the sale with the same force, effect, validity, and priority as such liens or interests had with respect to the Property prior to the sale.
Good Faith Finding	The proposed sale has been brought in good faith and has been negotiated on an "arms length" basis. The negotiations with the Buyer have resulted in an offer to sell the Estate's interest in the Property that will have substantial benefit. Accordingly, the sale is in good faith and should be approved. The Trustee shall request such a finding pursuant to Bankruptcy Code Section 363(m) at the hearing on this Sale Motion.

1 2 3	Waiver of Rule 6004(h) The Trustee requests that the Court waive the fourteen-day stay of the order approving the sale of the Property under Federal Rules of Bankruptcy Procedure 6004(h) such that the sale of the Property can close as soon as possible after entry of the Court order approving the Sale Motion and the Agreement.
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4 **E. Tax Consequences of Sale**

5 The Trustee consulted with her proposed accountants who informed her with a cost basis
6 of \$132,500.00 (per 2009 Lucky Ducky tax return) for the Property, after factoring in the costs of
7 sale, there will be a capital gain of approximately \$221,785.00 resulting in federal capital gains
8 tax of approximately \$10,167.00 and California income tax of approximately \$7,899.00. The
9 Trustee is consulting with the Debtors to determine if there were improvements made to the
10 Property which would increase the cost basis for the Property and thereby, decrease the capital
11 gain on the sale and taxes thereon.

12 Even after payment of these taxes, there is substantial equity in the Property as shown
13 below.

14 **F. Notice of Bidding Procedures**

15 The Trustee has determined that it would benefit the Estate to permit all interested parties
16 to receive information and bid for the Property instead of selling the Property to the Buyer on an
17 exclusive basis. Accordingly, in order to obtain the highest and best offer for the benefit of the
18 creditors of this Estate, the Trustee also seeks Court approval of the following bidding
19 procedures ("Bidding Procedures"):

20 1. Potential overbidder(s) must bid an initial amount of at least \$5,000.00 over the
21 Purchase Price, or \$310,000.00. Minimum bid increments thereafter shall be \$1,000.00. The
22 Trustee shall have sole discretion in determining which overbid is the best for the Estate and will
seek approval from the Court of the same.

23 2. Overbids must be in writing and be received by the Trustee and the Trustee's
24 counsel, Shulman Hodges & Bastian LLP to the attention of Rika M. Kido on or before **5:00
p.m. (California time) on Friday, January 9, 2015.**

25 3. Overbids must be accompanied by certified funds in an amount equal to six and
26 one half percent (6.5%) of the overbid purchase price.

27 4. The overbidder must also provide evidence of having sufficient specifically
28 committed funds to complete the transaction, or a lending commitment for the bid amount and
such other documentation relevant to the bidder's ability to qualify as the purchaser of the
Property and ability to close the sale and immediately and unconditionally pay the winning bid
purchase price at closing.

5. The overbidder must seek to acquire the Property on terms and conditions not less favorable to the Estate than the terms and conditions to which the Buyer has agreed to purchase the Property as set forth in the Agreement attached as **Exhibit "3"** to the Bui Declaration including closing on the sale of the Property in the same time parameters as the Buyer.

6. All competing bids must acknowledge that the Property is being sold on an "AS IS" basis without warranties of any kind, expressed or implied, being given by the Trustee, concerning the condition of the Property or the quality of the title thereto, or any other matters relating to the Property. The competing bid buyer must represent and warrant that he/she is purchasing the Property as a result of their own investigations and are not buying the Property pursuant to any representation made by any broker, agent, accountant, attorney or employee acting at the direction, or on the behalf of the Trustee. The competing bidder must acknowledge that he/she has inspected the Property, and upon closing of Escrow governed by the Agreement, the competing buyer forever waives, for himself/herself, their heirs, successors and assigns, all claims against the Debtors, their attorneys, agents and employees, the Debtors' Estate, Lynda T. Bui as Trustee and individually, and her attorneys, agents and employees, arising or which might otherwise arise in the future concerning the Property.

7. If overbids are received, the final bidding round for the Property shall be held at the hearing on the Sale Motion in order to allow all potential bidders the opportunity to overbid and purchase the Property. At the final bidding round, the Trustee or his counsel will, in the exercise of their business judgment and subject to Court approval, accept the bidder who has made the highest and best offer to purchase the Property, consistent with the Bidding Procedures ("Successful Bidder").

8. At the hearing on the Sale Motion, the Trustee will seek entry of an order, *inter alia*, authorizing and approving the sale of the Property to the Successful Bidder. The hearing on the Sale Motion may be adjourned or rescheduled without notice other than by an announcement of the adjourned date at the hearing on the Sale Motion.

9. In the event the Successful Bidder fails to close on the sale of the Property within the time parameters approved by the Court, the Trustee shall retain the Successful Bidder's Deposit and will be released from his obligation to sell the Property to the Successful Bidder and the Trustee may then sell the Property to the first back-up bidder approved by the Court at the hearing on the Sale Motion ("First Back-Up Bidder").

10. In the event First Back-Up Bidder fails to close on the sale of the Property within the time parameters approved by the Court, the Trustee shall retain the First Back-Up Bidder's Deposit and will be released from his obligation to sell the Property to the First Back-Up Bidder and the Trustee may then sell the Property to the second back-up bidder approved by the Court at the hearing on the Sale Motion ("Second Back-Up Bidder").

III. ARGUMENT

A. The Court May Authorize the Sale When There is a Good Faith Purchaser

The Trustee, after notice and hearing, may sell property of the estate. 11 U.S.C. § 363(b). The standards to establish are that there is a sound business purpose for the sale, that the sale is in the best interests of the estate, i.e., the sale is for a fair and reasonable price, that there is accurate and reasonable notice to creditors and that the sale is made in good faith. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722 F.2d

1063, 1069 (2d Cir. 1983). Business justification would include the need to close a sale to one of very few serious bidders where an asset has been shopped and a delay could jeopardize the transaction. *See, e.g., In re Crowthers McCall Pattner, Inc.*, 114 B.R. 877, 885 (Bankr. S.D.N.Y. 1990) (extreme difficulty finding a buyer justified merger when buyer found). The Trustee's proposed sale of the Property meets the foregoing criteria.

1. Sound Business Purpose

The Ninth Circuit has adopted a flexible, case-by-case test to determine whether the business purpose for a proposed sale justifies disposition of property of the estate under Section 363(b). *In re Walter*, 83 B.R. 14 (B.A.P. 9th Cir. 1988). In *Walter*, the Ninth Circuit, adopting the reasoning of the Fifth Circuit in *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986), and the Second Circuit in *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983), set forth the following standard to be applied under Bankruptcy Code Section 363(b):

Whether the proffered business justification is sufficient depends on the case. As the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike. He might, for example, look to such relevant factors as the proportionate value of the assets to the estate as a whole, the amount of lapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasingly or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

Walter, 83 B.R. at 19-20 (quoting *Continental*, 780 F.2d at 1226).

Here, the facts surrounding the sale of the Property support the Trustee's business decision that the proposed sale is in the best interests of the Estate and its creditors. Through the sale, the Trustee expects to generate net proceeds of approximately \$12,677.81 as follows (amounts are estimated):

Sale Price	\$305,000.00
Less real estate commission and costs of sale (8%)	(\$24,400.00)
Less amount due to Specialized Loan Servicing, LLC on the First Deed of Trust (payoff expires on 12/31/14)	(\$247,351.38)
Less First Installment of 2014-2015 property taxes (will be pro-rated)	(\$418.31)

1	<i>Less estimated amounts due Highland Casitas HOA</i>	(\$2,086.50)
2	<i>Less estimated Federal capital gains taxes</i>	(\$10,167.00)
3	<i>Less estimated State capital gains taxes</i>	(\$7,899.00)
4	Estimated Net Sale Proceeds for the benefit of the Estate	\$12,677.81

5
6 The estimated net proceeds will substantially benefit the Estate by providing funds for a
7 distribution to unsecured creditors. If the Motion is not approved, then there will be a substantial
8 loss to the Estate. In such event, the Estate will not receive any benefit from the Property.

9 Furthermore, the Trustee believes that the proposed sale, subject to overbids, will be at
10 fair market value because it is the best offer the Estate has received thus far for the Property, and
11 is the result of negotiations between the Trustee and the Buyer for the best and highest offer.
12 Given that the sale is subject to overbids, it is anticipated the Trustee will receive the best and
13 highest value for the Property and therefore the proposed sale price of the Property is fair and
14 reasonable. Therefore, the Trustee respectfully submits that, if this Court applies the good
15 business reason standard suggested by the Second Circuit in *Lionel*, the sale should be approved.

16 **2. The Sale Serves the Best Interests of the Estate and Creditors**

17 The Trustee believes that it would be in the best interest of the Estate and its creditors to
18 sell the Property. The benefits to the Estate, as set forth above, are significant as the proposed
19 sale will yield an estimated \$12,677.81 to the Estate. If the Sale Motion is not approved, the
20 Estate will not receive the sale proceeds and will likely lose the Buyer. The Trustee does not
21 want to lose this beneficial business opportunity. Thus, the Trustee has made a business decision
22 that it is in the best interest of the creditors of the Estate that this Sale Motion be approved.

23 **3. Accurate and Reasonable Notice**

24 It is expected that notice of this Sale Motion will satisfy the requirements for accurate
25 and reasonable notice.

26 The notice requirements for sales are set forth in Federal Rules of Bankruptcy Procedure
27 (“FRBP”) 6004 and 2002. The notice must include the time and place of any public sale and/or
28 the terms and conditions of any private sale, the time fixed for filing on objections and a general
description of the property. Fed. R. Bankr. P. 2002(c)(1).

1 In compliance with FRBP 2002 and Bankruptcy Code Section 102(1), the Trustee shall
2 provide notice of the proposed sale of the Property to creditors and parties in interest. The
3 Notice of Sale Motion will include a summary of the terms and conditions of the proposed
4 private sale, the time fixed for filing objections, and a general description of the Property. The
5 Trustee submits that the notice requirements will have been satisfied, thereby allowing creditors
6 and parties in interest an opportunity to object to the sale. Hence, no further notice should be
7 necessary.

8 **4. The Sale is Made in Good Faith**

9 The proposed sale has been brought in good faith and has been negotiated on an “arms
10 length” basis. The court, in *Wilde Horse Enterprises*, set forth the factors in considering whether
11 a transaction is in good faith. The court stated:

12 “Good faith” encompasses fair value, and further speaks to the integrity of the
13 transaction. Typical ‘bad faith’ or misconduct, would include collusion between
14 the seller and buyer, or any attempt to take unfair advantage of other potential
15 purchasers. . . . And, with respect to making such determinations, the court and
creditors must be provided with sufficient information to allow them to take a
position on the proposed sale.

16 *Id.* at 842 (citations omitted).

17 In the present case, the negotiation of the proposed sale was an arms-length transaction.
18 The negotiations with the Buyer resulted in a sale price for the Property that will have substantial
19 benefit to the Estate. As set forth in the Notice of the Sale Motion, the creditors will have been
20 provided with sufficient notice of the sale. Accordingly, the sale is in good faith and should be
21 approved. The Trustee shall request such a finding pursuant to Bankruptcy Code Section 363(m)
at the hearing on this Sale Motion.

22 **B. The Proposed Sale Should be Allowed Free and Clear of Liens**

23 Bankruptcy Code Section 363(f) allows a trustee to sell property of the bankruptcy estate
24 “free and clear of any interest in such property of an entity,” if any one of the following five
25 conditions is met:

26 (1) applicable non-bankruptcy law permits a sale of such property free
27 and clear of such interest;

28 (2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest.

11 U.S.C. § 363(f).

Here, the sales price is greater than the aggregate amount of all liens against the Property as shown above. As such, the Property can be sold free and clear of all liens pursuant to Section 363(f)(3).

C. The Court has the Authority to Approve the Bidding Procedures

Implementation of the Bidding Procedures is an action outside of the ordinary course of the business. Bankruptcy Code Section 363(b)(1) provides that a trustee “after notice and hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Furthermore, under Bankruptcy Code Section 105(a), “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Thus, pursuant to Bankruptcy Code Sections 363(b)(1) and 105(a), this Court may authorize the implementation of overbidding procedures.

The Ninth Circuit, in a case under the Bankruptcy Act, recognized the power of a bankruptcy court to issue orders determining the terms and conditions for overbids with respect to a sale of estate assets. *In re Crown Corporation*, 679 F.2d 774 (9th Cir. 1982). The *Crown Corporation* court entered an order specifying the minimum consideration required for an overbid as well as the particular contractual terms required to be offered by overbidders. *Id.* at 777. The *Crown Corporation* decision also approves an order requiring and setting the amount of potential overbidder’s deposits and authorized courts to determine the disposition of such deposits. *Id.* While the discussion is not extensive, the *Crown Corporation* decision recognizes the authority of bankruptcy courts to order the implementation of bidding procedures such as those proposed in the present case.

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///

1 **1. The Overbid Procedures are Untainted by Self-Dealing**

2 The Bidding Procedures have been proposed in good faith and have been negotiated on
3 an “arms-length” basis. Therefore, there is no prospective taint in dealings between Trustee and
4 any potential bidders.

5 **2. The Overbid Procedures Encourage Bidding and are Fair in Amount**

6 The Bidding Procedures are designed to encourage, not hamper bidding and are
7 reasonable under the circumstances. The Bidding Procedures are intended to provide potential
8 overbidders with adequate information to make an informed decision as to the amount of their
9 bid and the validity of their bid.

10 **3. The Overbid Procedures are Fair, Reasonable and Serve the Best Interests of**
11 **the Estate**

12 The proposed Bidding Procedures serve the Estate in several ways. First, the Bidding
13 Procedures themselves are fair, reasonable and productive; they will permit the Trustee to
14 conduct an orderly sale and obtain the best possible price on the best possible terms for the
15 Property.

16 The Bidding Procedures will ensure that all bids will be comparable. The Trustee will
17 determine which bid is the highest and best for the Estate. The comparability requirement of the
18 Bidding Procedures will make it possible to accomplish this task.

19 The Bidding Procedures will help the Trustee to obtain the highest and best possible price
20 for the Property. The Bidding Procedures institute minimum overbid increments which the
21 Trustee believes are reasonable. Thus, the Trustee will be able to obtain substantial benefit for
22 this Estate from the sale of the Property from competing bids.

23 The Bidding Procedures require that potential bidders demonstrate their capacity to
24 complete the transaction. It would be a serious loss to the Estate if it surrendered its opportunity
25 to sell the Property to one buyer in favor of a competing bidder only to discover the successful
26 bidder incapable of consummating the transaction. Thus, requiring bidders to qualify as
27 qualified bidders will protect the Estate from such a loss.

28 ///

1 Finally, the most important benefit of the Bidding Procedures to the Estate is that their
2 implementation will enable the consummation of the proposed sale. The proposed sale will be
3 the best way to obtain the maximum and most expedient recovery for creditors of this Estate.
4 Implementation of the Bidding Procedures is an essential component of consummating the sale
5 of the Property and maximizing the value of the Property for the Estate and creditors.

6 The Bidding Procedures proposed by the Trustee are fair and provide for a “level playing
7 field” for all prospective bidders with respect to the Property. The proposed Bidding Procedures
8 establish a reasonable but expeditious timeline for allowing the Trustee to give notice of the
9 proposed sale and qualified bidders to conduct reasonable due diligence and submit competing
10 offers for the Property, thereby potentially generating additional value for the Property.
11 Furthermore, the notice that the Trustee proposes to provide to creditors and parties in interest in
12 connection with the Bidding Procedures and Sale Motion is designed to attract the most interest
13 in the acquisition of the Property and is sufficient under the circumstances of this case. Thus,
14 approval of the Bidding Procedures will serve the best interests of the Estate and its creditors.

15 **D. The Court has the Authority to Waive the Fourteen-Day Stay of Sale**

16 Federal Rule of Bankruptcy Procedure 6004(h) provides that “[a]n order authorizing the
17 use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days
18 after entry of the order, unless the Court orders otherwise.” Fed. Rule Bankr. P. 6004(h).

19 The Trustee desires to close the sale of the Property as soon as practicable after entry of
20 an order approving the sale. Accordingly, the Trustee requests that the Court, in the discretion
21 provided it under Federal Rule of Bankruptcy Procedure 6004(h), waive the fourteen-day stay
22 requirement.

23 **E. Request for Payment of Real Estate Commission**

24 Bankruptcy Code Section 327 allows, with court approval, for the trustee to employ
25 professional persons, “that do not hold or represent an interest adverse to the estate, and that are
26 disinterested persons.” 11 U.S.C. § 327(a). By an Order entered on May 29, 2014, the Trustee
27 was authorized to employ the Broker to assist the Trustee in the marketing and sale of the
28 Property.

Bankruptcy Code Section 328 allows employment of a professional person under section 327 “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a) (emphasis added). Through this Sale Motion, as provided in the Agreement, the Trustee seeks authorization to pay a real estate broker commission in the amount of six percent (6%) of the purchase price. Through escrow on the sale of the Property, and subject to Bankruptcy Court approval, the Trustee shall pay a real estate broker’s commission as follows:

<u>Agent</u>	<u>Commission</u>
Trustee’s Broker Richard A. Halderman, Jr.	\$9,150.00
Buyer’s Broker MiYona Pagni, Pagni Real Estate	\$9,150.00
Total Commission	\$18,300.00

IV. CONCLUSION

WHEREFORE, based upon the foregoing, the Trustee respectfully submits that good cause exists for granting the Sale Motion and requests that the Court enter an order as follows:

1. Approving the Bidding Procedures set forth above for the sale of the Property.
2. Authorizing the Trustee to sell the Property to the Buyer (or Successful Bidder) pursuant to the terms and conditions as set forth in the Agreement attached as **Exhibit “3”** to the Bui Declaration.
3. Authorizing the sale of the Property free and clear of liens.
4. Authorizing the Trustee to sign any and all documents convenient and necessary in pursuit of the sale as set forth above, including but not limited to any and all conveyances contemplated by the Agreement attached as **Exhibit “3”** to the Bui Declaration.
5. Approving the payment of the real estate commission in the total amount not to exceed six percent (6%) of the purchase price.
6. Authorizing the Trustee to pay from the proceeds of the sale of the Property through escrow all amounts owing in relation to all secured liens and encumbrances on the Property;

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1 7. Authorizing the Trustee to pay from the proceeds of the sale of the Property all
2 ordinary and customary costs of sale, including escrow fees.

3 8. A determination by the Court that the Buyer is in good faith pursuant to
4 Bankruptcy Code Section 363(m).

5 9. Waiving the fourteen day stay of the order approving the sale of the Property
6 under Federal Rules of Bankruptcy Procedure 6004(h).

7 10. For such other and further relief as the Court deems just and proper under the
8 circumstances of this case.

Respectfully submitted,

SHULMAN HODGES & BASTIAN LLP

Dated: December 19, 2014

/s/ *Rika M. Kido*

Leonard M. Shulman

Rika M. Kido

Attorneys for Lynda T. Bui, Chapter 7 Trustee for
the bankruptcy estate of Dan and Patricia Bernstein

DECLARATION

DECLARATION OF LYNDA T. BUI

I, Lynda T. Bui, declare:

1. I am the duly appointed, qualified and acting Chapter 7 Trustee for the bankruptcy estate of Dan Louis Bernstein and Patricia Aileen Bernstein ("Debtors"). I have personal knowledge of the facts set forth herein, and if called and sworn as a witness, I could and would competently testify thereto, except where matters are stated on information and belief, in which case I am informed and believe that the facts so stated are true and correct.

2. I make this Declaration in support of my Motion for Order: (1) Approving the Sale of Real Property of the Estate Free and Clear of Certain Liens Pursuant to Bankruptcy Code §§ 363(b)(1) and (f); (2) Approving Payment of Real Estate Commission; and (3) Granting Related Relief ("Sale Motion"). All capitalized terms not otherwise defined herein shall have the meaning set forth in the Sale Motion.

3. I have read and I am aware of the contents of the Sale Motion and the accompanying Memorandum of Points and Authorities. The facts stated in the Sale Motion and the Memorandum of Points and Authorities are true to the best of my knowledge.

4. Pursuant to Court order entered on May 29, 2014 (Docket No. 144), I was authorized to employ Richard A. Halderman, Jr. ("Broker"), to assist me in the marketing and sale of the Property.

5. The Broker investigated the Property and believed that the value of the Property was between \$350,000.00 to \$360,000.00. The Property was thus listed for the sale price of \$360,000.00. The Property was listed on the Pacific West MLS and the Sandicor MLS (which covers all of Riverside, San Bernardino and San Diego counties) and advertised for sale since June 20, 2014. There was significant interest in the Property, including thirty-three (33) inquiries and twenty (20) showings. However, while there were multiple showings, after thirty (30) days on the market, no offers were made. As such, the listing price was dropped to \$335,000.00. After an additional ninety (90) days on the market at the \$335,000.00 listing price and two (2) offers for \$275,000.00 and \$280,000.00, the listing price was dropped to

1 \$318,500.00. Subsequently, there were two (2) offers made for the Property, including the
2 Buyer's offer of \$300,000.00, which I countered for \$305,000.00 and the Buyer accepted.

3 6. The Debtors did not list the Property on their Bankruptcy Schedules. As of the
4 Petition Date, the Property was in the name of Lucky Ducky, LLC ("Lucky Ducky"), a company
5 owned by the Debtors and their children. Pursuant to a Settlement Agreement entered into
6 between the Debtors, Lucky Ducky, Shawn Caster, Danielle Bernstein, Kristina Valdovinos, and
7 Royce Copeman (collectively, the "Defendants") and me, the Defendants agreed to transfer their
8 interest in the Property to the Trustee upon Court approval of the settlement. On April 14, 2014,
9 the Court entered the Order Granting Motion and Approving Settlement and Compromise of
10 Disputes by and Between Chapter 7 Trustee and Dan Louis Bernstein, Patricia Aileen Bernstein,
11 Lucky Ducky, LLC, Shawn Caster, Danielle Bernstein, Kristina Valdovinos and Royce
12 Copeman, Docket No. 123 ("Settlement Order") and the Property has since been transferred to
13 the Estate by Grant Deed. A true and correct copy of the recorded Grant Deed is attached hereto
14 as **Exhibit "1"**.

15 7. The Sale Motion sets forth the proposed treatment of all the liens and
16 encumbrances against the Property as detailed in Preliminary Title Report dated May 18, 2014, a
17 true and correct copy of which is attached hereto as **Exhibit "2."**

18 8. Through my Broker, I received an offer from the Buyer to purchase the Property
19 for \$300,000.00. I instructed my Broker to counter the Buyer's offer at \$305,000.00, which was
20 accepted. Attached hereto as **Exhibit "3"** is a true and correct copy of the Residential Purchase
21 Agreement and Joint Escrow Instructions and Counter Offers and related addendum
22 (collectively, the "Agreement") for which I am seeking Court approval.

23 9. The Buyer's offer for the purchase of the Property for \$305,000.00 is the best
24 offer that the Estate has received thus far. I am seeking to sell the Estate's interest in the
25 Property free and clear of all liens, claims, and encumbrances and subject to the Bidding
26 Procedures described in the Sale Motion.

27 10. Through the sale, I expect to generate proceeds of \$12,677.81, which will benefit
28 the Estate by providing funds for a distribution to the holders of unsecured claims.

1 11. For the reasons set forth in the Sale Motion and this Declaration, I respectfully
2 request that the Court grant the Sale Motion so that I do not lose this favorable business
3 opportunity to net a substantial amount of money for the Estate.

4 I declare under penalty of perjury under the laws of the United States of America that the
5 foregoing is true and correct.

6 Executed on December 18, 2014, at Irvine, California.

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Lynda T. Bui

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EXHIBIT “1”

RECORDED GRANT DEED

DOC # 2014-0245454



221-480-20-02 ✓

RECORDING REQUESTED BY

4585-000

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENT TO:

Name SHULMAN HODGES & BASTIAN LLP (MDL)

Street 3750 University Avenue

Address Suite 670

City & State Riverside, CA 92501

Zip (949) 340-3400

Title Order No. Escrow No.

JUN 13, 2014 11:54 AM

OFFICIAL RECORDS

SAN DIEGO COUNTY RECORDER'S OFFICE
Ernest J. Dronenburg, Jr., COUNTY RECORDER

FEES: 22.00

OC: OC

PAGES: 3



T 355 Legal (2-94)

Grant Deed

SPACE ABOVE THIS LINE FOR RECORDER'S USE

THE UNDERSIGNED GRANTOR(S) DECLARE(S) Exempt from documentary transfer tax pursuant to R&T 11923(a)(1) and no consideration

DOCUMENTARY TRANSFER TAX IS \$ -0- no consideration for transfer

☐ unincorporated area ☒ City of SAN MARCOS

Parcel No. 219-480-20-02

☐ computed on full value of interest or property conveyed, or

☐ computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
LUCKY DUCKY, LLC, a California limited liability company

hereby GRANT(S) to Lynda T. Bui, solely in her capacity as the duly appointed Chapter 7 Trustee for the bankruptcy estate of DAN LOUIS BERNSTEIN and PATRICIA AILEEN BERNSTEIN (United States Bankruptcy Court, Central District of California, Riverside Division, Case No: 6:12-bk-31622-WJ)

the following described real property in the city of SAN MARCOS

county of SAN DIEGO, state of California:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

1026 La Tierra Drive
San Marcos, CA 92076

Dated 6-2-2014

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO } s.s.

On 06/02/2014 before me,

KIRAN B. MISRA, NOTARY PUBLIC
personally appeared KRISTINA VALDOVINOS

LUCKY DUCKY, LLC, a California limited liability

company

BY: Waldonnes

NAME: Kristina Valdovinos

TITLE: Managing Partner

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature Kiran B. Misra



(This area for notarial seal)

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Lynda T. Bui, Trustee 3750 University Avenue, Suite 670 Riverside, CA 92501
Name Street Address City & State

CTC-13

EXHIBIT "1"

Exhibit A

All that certain real property situated in the County of San Diego, State of California, described as follows:

A CONDOMINIUM COMPRISED OF:

INTEREST 1:

An undivided 1/10 interest in and to Parcels 1, 2 and 3, in the County of San Diego, State of California, as shown on Page 5690 of Parcel Maps, filed in the Office of the County Recorder of said San Diego County, March 17, 1977.

EXCEPTING THEREFROM the following:

- (a) Units 1 through 10 inclusive, as shown upon the certain Highland Casitas Condominium Plan, recorded October 7, 1977 as File No. 77-412413 of Official Records of San Diego County.
- (b) The exclusive right to possession of all those areas designated as Patios, as shown upon the Condominium Plan above referred to.

INTEREST 2:

The exclusive right to possession and occupancy of those portions of Parcels 1, 2 and 3, described in Interest 1 above, designated as P-2 on the Condominium Plan above referred to, as appurtenant to Interest 1 and 2 above described.

EXHIBIT “2”

PRELIMINARY TITLE REPORT



Fidelity National Title Company

PRELIMINARY REPORT

*In response to the application for a policy of title insurance referenced herein, **Fidelity National Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.*

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

*The policy(s) of title insurance to be issued hereunder will be policy(s) of **Fidelity National Title Insurance Company**, a California Corporation.*

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

Countersigned by:

Authorized Signature



BY

ATTEST

President
Secretary

Authorized Signature



Fidelity National Title Company

19000 MacArthur Blvd., Suite 300, Irvine, CA 92612
Phone: (949) 788-2800 • Fax: (949) 341-0251

PRELIMINARY REPORT

Title Officer: **Jeff Allen**
Phone: **(949) 788-2812**
Fax: **(949) 341-0577**
Email: **jeff.allen@fnf.com**

ORDER NO.: **00064709-997-OC1-JA1**

LOAN NO.:

Lido Pacific
225 N. Broadway
Santa Ana, CA 99999

ATTN: **Richard**
YOUR REF:

PROPERTY: **1026 La Tierra Drive, San Marcos Area, CA**

EFFECTIVE DATE: **December 2, 2014 at 7:30 a.m.**

The form of policy or policies of title insurance contemplated by this report is:

ALTA Homeowner's Policy (2-3-10)
ALTA Extended Loan Policy (6-17-06)

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Condominium, as defined in Sections 783 and 1351(f) of the California Civil Code, in fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

Lynda T. Bui, solely in her capacity as the duly appointed Chapter 7 Trustee for the bankruptcy estate of Dan Louis Bernstein and Patricia Bernstein(United States Bankruptcy Court, Central District of California, Riverside Division, Case No: 6:12-bk-31622-WJ)

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

See Exhibit A attached hereto and made a part hereof.

JA1/es2 June 3, 2014

PRELIMINARY REPORT
YOUR REFERENCE:

Fidelity National Title Company
ORDER NO.: 00064709-997-OC1-JA1

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF **SAN DIEGO**, STATE OF **CALIFORNIA**, AND IS DESCRIBED AS FOLLOWS:

A CONDOMINIUM COMPOSED:

INTEREST 1:

AN UNDIVIDED 1/10 INTEREST IN AND TO PARCELS 1, 2 AND 3 IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN ON PAGE 5690 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, MARCH 17, 1977.

EXCEPTING THEREFROM THE FOLLOWING:

(A) UNITS 1 THROUGH 10 INCLUSIVE, AS SHOWN UPON THE CERTAIN HIGHLAND CASITAS CONDOMINIUM PLAN, RECORDED OCTOBER 7, 1977 AS FILE NO. 1977-412413 OF OFFICIAL RECORDS OF SAN DIEGO COUNTY.

(B) THE EXCLUSIVE RIGHT TO POSSESSION OF ALL THOSE AREAS DESIGNATED AS PATIOS, AS SHOWN UPON THE CONDOMINIUM PLAN ABOVE REFERRED TO.

INTEREST 2:

THE EXCLUSIVE RIGHT TO POSSESSION AND OCCUPANCY OF THOSE PORTIONS OF PARCELS 1, 2 AND 3, DESCRIBED IN INTEREST 1 ABOVE, DESIGNATED AS P-2 ON THE CONDOMINIUM PLAN ABOVE REFERRED TO, AS APPURTENANT TO INTEREST 1 AND 2 ABOVE DESCRIBED.

APN: **221-480-20-02**

PRELIMINARY REPORT
YOUR REFERENCE:

Fidelity National Title Company
ORDER NO.: 00064709-997-OC1-JA1

AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

1. Property taxes, including any personal property taxes and any assessments collected with taxes are as follows:

Code Area:	76158
Tax Identification No.:	221-480-20-02
Fiscal Year:	2014-2015
1st Installment:	\$418.31 Paid
2nd Installment:	\$418.31 Unpaid
Exemption:	\$0.00
Land:	\$18,003.00
Improvements:	\$54,145.00
Personal Property:	\$0.00

2. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.

Note: If said supplementals (if any) are not posted prior to the date of closing, this company assumes no liability for payment thereof.

3. The fact that the ownership of said land does not include rights of access to or from the street, highway or freeway abutting said land, such rights having been relinquished by map of said Tract,

Affects: Rancho Santa Fe Road

Said land, however, abuts on a public thoroughfare, other than the one referred to above, over which the rights of vehicular access have not been relinquished.

PRELIMINARY REPORT
YOUR REFERENCE:

Fidelity National Title Company
ORDER NO.: 00064709-997-OC1-JA1

EXCEPTIONS
(Continued)

4. The matters set forth in the document shown below which, among other things, contains or provides for: certain easements; liens and the subordination thereof; provisions relating to partition; restrictions on severability of component parts; and covenants, conditions and restrictions, but omitting, except to the extent that said covenant or restriction is controlled or permitted by any applicable federal or state law, any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, medical condition, national origin, source of income, or ancestry.

Entitled: Declaration of Covenants, Conditions and Restrictions
Recording Date: December 30, 1977
Recording No.: Instrument No. 1977-541375, of Official Records

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of a first mortgage or first deed of trust made in good faith and for value.

Said instrument also provides for the levy of assessments, the lien of which is stated to be subordinate to the lien of certain mortgages or deeds of trust made in good faith and for value.

Modification(s) of said covenants, conditions and restrictions

Recording Date: February 21, 2001
Recording No: Instrument No. 2001-97996, of Official Records

5. Non-exclusive easements over and through the common area for ingress, egress, public utility, enjoyment, support and repair of the common area and each unit, as provided in the above mentioned declaration and as disclosed by various deeds of record.

Affects: Common Area

6. A deed of trust to secure an indebtedness in the amount shown below, and any other obligations secured thereby

Amount: \$245,000.00
Dated: September 19, 2005
Trustor: Danny Louis Befnstein and Patricia A. Bernstein, husband and wife as joint tenants
Trustee: ReconTrust Company, N.A.
Beneficiary: MERS, strictly as Nominee for Countrywide Home Loans, Inc.
Loan No.: 113112722
Recording Date: September 27, 2005
Recording No: Instrument No. 2005-833533, of Official Records.

The Deed of Trust set forth above is purported to be a "Credit Line" Deed of Trust. It is a requirement that the Trustor/Grantor of said Deed of Trust provide written authorization to close said credit line account to the Lender when the Deed of Trust is being paid off through the Company or other Settlement/Escrow Agent or provide a satisfactory subordination of this Deed of Trust to the proposed Deed of Trust to be recorded at closing.

Assignment of the beneficial interest under said deed of trust which names:

Assignee: E*Trade Bank c/o Specialized Loan Servicing, LLC
Recording Date: March 6, 2013
Recording No.: Instrument No. 2013-144923, of Official Records

PRELIMINARY REPORT
YOUR REFERENCE:

Fidelity National Title Company
ORDER NO.: 00064709-997-OC1-JA1

EXCEPTIONS
(Continued)

7. A pending Court Action as disclosed by a recorded notice:

Plaintiff: Hallmark Marketing Corporation, Delaware Corporation
Defendant: Dan Bernstein aka Dan L. Bernstein, Patti Bernstein aka Patti A. Bernstein, Personal Expressions, Inc., Lucky Ducky, LLC, Shawn Caster, and Does I Through 100
County: San Diego
Court: Superior Court of California County of San Diego
Case No.: 37-2012-00098396-CU-CL-CTL
Nature of Action: Real Property Claim
Recorded: July 26, 2012
Recording No.: Instrument No. 2012-435613, of Official Records

8. In order to complete this report, the Company requires a Statement of Information to be completed by the following party(s),

Party(s): All Parties

The Company reserves the right to add additional items or make further requirements after review of the requested Statement of Information.

NOTE: The Statement of Information is necessary to complete the search and examination of title under this order. Any title search includes matters that are indexed by name only, and having a completed Statement of Information assists the Company in the elimination of certain matters which appear to involve the parties but in fact affect another party with the same or similar name. Be assured that the Statement of Information is essential and will be kept strictly confidential to this file.

9. Your application for title insurance was placed by reference to only a street address or tax identification number. Based on our records, we believe that the legal description in this report covers the parcel(s) of Land that you requested. If the legal description is incorrect, the seller/borrower must notify the Company and/or the settlement company in order to prevent errors and to be certain that the correct parcel(s) of Land will appear on any documents to be recorded in connection with this transaction and on the policy of title insurance.

END OF ITEMS

PRELIMINARY REPORT
YOUR REFERENCE:

Fidelity National Title Company
ORDER NO.: 00064709-997-OC1-JA1

NOTES

1. Note: The current owner does NOT qualify for the \$20.00 discount pursuant to the coordinated stipulated judgments entered into actions filed by both the Attorney General and private class action plaintiff for the herein described Land.
2. None of the items shown in this report will cause the Company to decline to attach CLTA Endorsement Form 100 to an Extended Coverage Loan Policy, when issued.
3. Note: The Company is not aware of any matters which would cause it to decline to attach CLTA Endorsement Form 116.2 indicating that the Land includes a Condominium designated as Unit 2 and known as 1026 La Tierra Drive, San Marcos Area, California to an Extended Coverage Loan Policy.
4. Unless this company is in receipt of WRITTEN instructions authorizing a particular policy, Fidelity Title will AUTOMATICALLY issue the American Land Title Association Homeowner's Policy (02/03/2010) for all qualifying residential 1-4 properties/transactions to insure the buyer at the close of escrow.
5. Note: There are NO conveyances affecting said Land recorded within 24 months of the date of this report.
6. If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.
7. Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third party service. If the above requirements cannot be met, please call the Company at the number provided in this report
8. Amended Civil Code Section 2941, which becomes effective on January 1, 2002, sets the fee for the processing and recordation of the reconveyance of each Deed of Trust being paid off through this transaction at \$45.00. The reconveyance fee must be clearly set forth in the Beneficiary's Payoff Demand Statement ("Demand"). In addition, an assignment or authorized release of that fee, from the Beneficiary to the Trustee of record, must be included. An example of the required language is as follows:

The Beneficiary identified above hereby assigns, releases or transfers to the Trustee of record, the sum of \$45.00, included herein as 'Reconveyance Fees', for the processing and recordation of the Reconveyance of the Deed of Trust securing the indebtedness covered hereby, and the escrow company or title company processing this pay-off is authorized to deduct the Reconveyance Fee from this Demand and forward said fee to the Trustee of record or the successor Trustee under the Trust Deed to be paid off in full.

In the event that the reconveyance fee and the assignment, release or transfer are not included within the demand statement, then Fidelity National Title Insurance Company and its Underwritten Agent may decline to process the reconveyance and will be forced to return all documentation directly to the Beneficiary for compliance with the requirements of the revised statute.

PRELIMINARY REPORT
YOUR REFERENCE:

Fidelity National Title Company
ORDER NO.: 00064709-997-OC1-JA1

NOTES
(Continued)

9. The RESPA Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Cost includes a provision for average charges, allowing settlement service providers to establish an average recording fee. Transactions opening after May 1, 2014; the average recording charge for all residential loan transactions (including refinances) is \$85.00 and the charge for all residential sale transactions with a purchase money loan is \$85.00. Divide the average between the buyer and seller as per contract or local custom. The average charge is applied regardless of the number of documents recorded in the transaction, the number of pages in each document or the actual recording charges. If your transaction is not a residential loan or sale with a new loan, please contact your title professional for the actual recording charges.
10. Note: Part of the RESPA Rule to simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs requires the settlement agent to disclose the agent and underwriter split of title premiums, including endorsements as follows:
- Line 1107 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title agent. Fidelity National Title Company retains 88% of the total premium and endorsements.
- Line 1108 used to record the amount of the total title insurance premium, including endorsements, that is retained by the title underwriter. Fidelity National Title Insurance Company retains 12% of the total premium and endorsements.

END OF NOTES

FIDELITY NATIONAL FINANCIAL PRIVACY NOTICE

Fidelity National Financial, Inc. and its majority-owned subsidiary companies providing real estate- and loan-related services (collectively, "FNF", "our" or "we") respect and are committed to protecting your privacy. This Privacy Notice lets you know how and for what purposes your Personal Information (as defined herein) is being collected, processed and used by FNF. We pledge that we will take reasonable steps to ensure that your Personal Information will only be used in ways that are in compliance with this Privacy Notice.

This Privacy Notice is only in effect for any generic information and Personal Information collected and/or owned by FNF, including collection through any FNF website and any online features, services and/or programs offered by FNF (collectively, the "Website"). This Privacy Notice is not applicable to any other web pages, mobile applications, social media sites, email lists, generic information or Personal Information collected and/or owned by any entity other than FNF.

Collection and Use of Information

The types of personal information FNF collects may include, among other things (collectively, "Personal Information"): (1) contact information (e.g., name, address, phone number, email address); (2) demographic information (e.g., date of birth, gender marital status); (3) Internet protocol (or IP) address or device ID/UDID; (4) social security number (SSN), student ID (SIN), driver's license, passport, and other government ID numbers; (5) financial account information; and (6) information related to offenses or criminal convictions.

In the course of our business, we may collect Personal Information about you from the following sources:

- Applications or other forms we receive from you or your authorized representative;
- Information we receive from you through the Website;
- Information about your transactions with or services performed by us, our affiliates, or others; and
- From consumer or other reporting agencies and public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others.

Information collected by FNF is used for three main purposes:

- To provide products and services to you or one or more third party service providers (collectively, "Third Parties") who are obtaining services on your behalf or in connection with a transaction involving you.
- To improve our products and services that we perform for you or for Third Parties.
- To communicate with you and to inform you about FNF's, FNF's affiliates and third parties' products and services.

Additional Ways Information is Collected Through the Website

Browser Log Files. Our servers automatically log each visitor to the Website and collect and record certain information about each visitor. This information may include IP address, browser language, browser type, operating system, domain names, browsing history (including time spent at a domain, time and date of your visit), referring/exit web pages and URLs, and number of clicks. The domain name and IP address reveal nothing personal about the user other than the IP address from which the user has accessed the Website.

Cookies. From time to time, FNF or other third parties may send a "cookie" to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive and that can be re-sent to the serving website on

subsequent visits. A cookie, by itself, cannot read other data from your hard disk or read other cookie files already on your computer. A cookie, by itself, does not damage your system. We, our advertisers and other third parties may use cookies to identify and keep track of, among other things, those areas of the Website and third party websites that you have visited in the past in order to enhance your next visit to the Website. You can choose whether or not to accept cookies by changing the settings of your Internet browser, but some functionality of the Website may be impaired or not function as intended. See the Third Party Opt Out section below.

Web Beacons. Some of our web pages and electronic communications may contain images, which may or may not be visible to you, known as Web Beacons (sometimes referred to as "clear gifs"). Web Beacons collect only limited information that includes a cookie number; time and date of a page view; and a description of the page on which the Web Beacon resides. We may also carry Web Beacons placed by third party advertisers. These Web Beacons do not carry any Personal Information and are only used to track usage of the Website and activities associated with the Website. See the Third Party Opt Out section below.

Unique Identifier. We may assign you a unique internal identifier to help keep track of your future visits. We may use this information to gather aggregate demographic information about our visitors, and we may use it to personalize the information you see on the Website and some of the electronic communications you receive from us. We keep this information for our internal use, and this information is not shared with others.

Third Party Opt Out. Although we do not presently, in the future we may allow third-party companies to serve advertisements and/or collect certain anonymous information when you visit the Website. These companies may use non-personally identifiable information (e.g., click stream information, browser type, time and date, subject of advertisements clicked or scrolled over) during your visits to the Website in order to provide advertisements about products and services likely to be of greater interest to you. These companies typically use a cookie or third party Web Beacon to collect this information, as further described above. Through these technologies, the third party may have access to and use non-personalized information about your online usage activity.

You can opt-out of online behavioral services through any one of the ways described below. After you opt-out, you may continue to receive advertisements, but those advertisements will no longer be as relevant to you.

- You can opt-out via the Network Advertising Initiative industry opt-out at <http://www.networkadvertising.org/>.
- You can opt-out via the Consumer Choice Page at www.aboutads.info.
- For those in the U.K., you can opt-out via the IAB UK's industry opt-out at www.youronlinechoices.com.
- You can configure your web browser (Chrome, Firefox, Internet Explorer, Safari, etc.) to delete and/or control the use of cookies.

More information can be found in the Help system of your browser. Note: If you opt-out as described above, you should not delete your cookies. If you delete your cookies, you will need to opt-out again.

When Information Is Disclosed By FNF

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your

prior authorization. Such laws do not allow consumers to restrict these disclosures. Disclosures may include, without limitation, the following:

- To agents, brokers, representatives, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers who provide services or perform marketing services or other functions on our behalf;
- To law enforcement or other governmental authority in connection with an investigation, or civil or criminal subpoenas or court orders; and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

In addition to the other times when we might disclose information about you, we might also disclose information when required by law or in the good-faith belief that such disclosure is necessary to: (1) comply with a legal process or applicable laws; (2) enforce this Privacy Notice; (3) respond to claims that any materials, documents, images, graphics, logos, designs, audio, video and any other information provided by you violates the rights of third parties; or (4) protect the rights, property or personal safety of FNF, its users or the public.

We maintain reasonable safeguards to keep the Personal Information that is disclosed to us secure. We provide Personal Information and non-Personal Information to our subsidiaries, affiliated companies, and other businesses or persons for the purposes of processing such information on our behalf and promoting the services of our trusted business partners, some or all of which may store your information on servers outside of the United States. We require that these parties agree to process such information in compliance with our Privacy Notice or in a similar, industry-standard manner, and we use reasonable efforts to limit their use of such information and to use other appropriate confidentiality and security measures. The use of your information by one of our trusted business partners may be subject to that party's own Privacy Notice. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

We also reserve the right to disclose Personal Information and/or non-Personal Information to take precautions against liability, investigate and defend against any third-party claims or allegations, assist government enforcement agencies, protect the security or integrity of the Website, and protect the rights, property, or personal safety of FNF, our users or others.

We reserve the right to transfer your Personal Information, as well as any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets. We also cannot make any representations regarding the use or transfer of your Personal Information or other information that we may have in the event of our bankruptcy, reorganization, insolvency, receivership or an assignment for the benefit of creditors, and you expressly agree and consent to the use and/or transfer of your Personal Information or other information in connection with a sale or transfer of some or all of our assets in any of the above described proceedings. Furthermore, we cannot and will not be responsible for any breach of security by any third parties or for any actions of any third parties that receive any of the information that is disclosed to us.

Information from Children

We do not collect Personal Information from any person that we know to be under the age of thirteen (13). Specifically, the Website is not intended or designed to attract children under the age of thirteen (13). You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Privacy Notice, and to abide by and comply with this Privacy Notice. In any case, you affirm that you are over the age of 13, as **THE WEBSITE IS NOT INTENDED FOR CHILDREN UNDER 13 THAT ARE UNACCOMPANIED BY HIS OR HER PARENT OR LEGAL GUARDIAN.**

Parents should be aware that FNF's Privacy Notice will govern our use of Personal Information, but also that information that is voluntarily given by children – or others – in email exchanges, bulletin boards or the like may be used by other parties to generate unsolicited communications. FNF encourages all parents to instruct their children in the safe and responsible use of their Personal Information while using the Internet.

Privacy Outside the Website

The Website may contain various links to other websites, including links to various third party service providers. FNF is not and cannot be responsible for the privacy practices or the content of any of those other websites. Other than under agreements with certain reputable organizations and companies, and except for third party service providers whose services either we use or you voluntarily elect to utilize, we do not share any of the Personal Information that you provide to us with any of the websites to which the Website links, although we may share aggregate, non-Personal Information with those other third parties. Please check with those websites in order to determine their privacy policies and your rights under them.

European Union Users

If you are a citizen of the European Union, please note that we may transfer your Personal Information outside the European Union for use for any of the purposes described in this Privacy Notice. By providing FNF with your Personal Information, you consent to both our collection and such transfer of your Personal Information in accordance with this Privacy Notice.

Choices with Your Personal Information

Whether you submit Personal Information to FNF is entirely up to you. You may decide not to submit Personal Information, in which case FNF may not be able to provide certain services or products to you.

You may choose to prevent FNF from disclosing or using your Personal Information under certain circumstances ("opt out"). You may opt out of any disclosure or use of your Personal Information for purposes that are incompatible with the purpose(s) for which it was originally collected or for which you subsequently gave authorization by notifying us by one of the methods at the end of this Privacy Notice. Furthermore, even where your Personal Information is to be disclosed and used in accordance with the stated purposes in this Privacy Notice, you may elect to opt out of such disclosure to and use by a third party that is not acting as an agent of FNF. As described above, there are some uses from which you cannot opt-out.

Please note that opting out of the disclosure and use of your Personal Information as a prospective employee may prevent you from being hired as an employee by FNF to the extent that provision of your Personal Information is required to apply for an open position.

If FNF collects Personal Information from you, such information will not be disclosed or used by FNF for purposes that are incompatible with the purpose(s) for which it was originally collected or for which you subsequently gave authorization unless you affirmatively consent to such disclosure and use.

You may opt out of online behavioral advertising by following the instructions set forth above under the above section "Additional Ways That Information Is Collected Through the Website," subsection "Third Party Opt Out."

Access and Correction

To access your Personal Information in the possession of FNF and correct inaccuracies of that information in our records, please contact us in the manner specified at the end of this Privacy Notice. We ask individuals to identify themselves and the information requested to be accessed and amended before processing such requests, and we may decline to process requests in limited circumstances as permitted by applicable privacy legislation.

Your California Privacy Rights

Under California's "Shine the Light" law, California residents who provide certain personally identifiable information in connection with obtaining products or services for personal, family or household use are entitled to request and obtain from us once a calendar year information about the customer information we shared, if any, with other businesses for their own direct marketing uses. If applicable, this information would include the categories of customer information and the names and addresses of those businesses with which we shared customer information for the immediately prior calendar year (e.g., requests made in 2013 will receive information regarding 2012 sharing activities).

To obtain this information on behalf of FNF, please send an email message to privacy@fnf.com with "Request for California Privacy Information" in the subject line and in the body of your message. We will provide the requested information to you at your email address in response.

Please be aware that not all information sharing is covered by the "Shine the Light" requirements and only information on covered sharing will be included in our response.

Additionally, because we may collect your Personal Information from time to time, California's Online Privacy Protection Act requires us to disclose how we respond to "do not track" requests and other similar mechanisms. Currently, our policy is that we do not recognize "do not track" requests from Internet browsers and similar devices.

Your Consent to This Privacy Notice

By submitting Personal Information to FNF, you consent to the collection and use of information by us as specified above or as we otherwise see fit, in compliance with this Privacy Notice, unless you inform us otherwise by means of the procedure identified below. If we decide to change this Privacy Notice, we will make an effort to post those changes on the Website. Each time we collect information from you following any amendment of this Privacy Notice will signify your assent to and acceptance of its revised terms for all previously collected information and information collected from you in the future. We may use comments, information or feedback that you may submit in any manner that we may choose without notice or compensation to you.

If you have additional questions or comments, please let us know by sending your comments or requests to:

Fidelity National Financial, Inc.
601 Riverside Avenue
Jacksonville, Florida 32204
Attn: Chief Privacy Officer
(888) 934-3354
privacy@fnf.com

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EFFECTIVE AS OF: JANUARY 24, 2014

LAST UPDATED: JANUARY 24, 2014

Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the field rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for each discount. These discounts only apply to transaction involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

FNF Underwritten Title Company

FNTC - Fidelity National Title Company

FNTCCA – Fidelity National Title Company of California

FNF Underwriter

FNTIC - Fidelity National Title Insurance Company

Available Discounts

CREDIT FOR PRELIMINARY REPORTS AND/OR COMMITMENTS ON SUBSEQUENT POLICIES (FNTIC)

Where no major change in the title has occurred since the issuance of the original report or commitment, the order may be reopened within 12 months and all or a portion of the charge previously paid for the report or commitment may be credited on a subsequent policy charge within the following time period from the date of the report.

FEE REDUCTION SETTLEMENT PROGRAM (FNTC, FNTCCA and FNTIC)

Eligible customers shall receive \$20.00 reduction in their title and/or escrow fees charged by the Company for each eligible transaction in accordance with the terms of the Final Judgments entered in The People of the State of California.

DISASTER LOANS (FNTIC)

The charge for a lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within 24 months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be 50% of the appropriate title insurance rate.

CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (FNTIC)

On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be 50% to 70% of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be 40% to 50% of the appropriate title insurance rate, depending on the type of coverage selected.

Notice

You may be entitled to receive a \$20.00 discount on escrow services if you purchased, sold or refinanced residential property in California between May 19,1995 and November 1, 2002. If you had more than one qualifying transaction, you may be entitled to multiple discounts.

If your previous transaction involved the same property that is the subject of your current transaction, you do not have to do anything; the Company will provide the discount, provided you are paying for escrow or title services in this transaction.

If your previous transaction involved property different from the property that is the subject of your current transaction, you must – prior to the close of the current transaction - inform the Company of the earlier transaction, provide the address of the property involved in the previous transaction, and the date or approximate date that the escrow closed to be eligible for the discount.

Unless you inform the Company of the prior transaction on property that is not the subject of this transaction, the Company has no obligation to conduct an investigation to determine if you qualify for a discount. If you provide the Company information concerning a prior transaction, the Company is required to determine if you qualify for a discount which is subject to other terms and conditions.

Effective through November 1, 2014

ATTACHMENT ONE (Revised 06-03-11)

**CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY – 1990**

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)

ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - a. building;
 - b. zoning;
 - c. land use;
 - d. improvements on the Land;
 - e. land division; and
 - f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;

- c. that result in no loss to You; or
- d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
- 5. Failure to pay value for Your Title.
- 6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.
 This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
- 7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

		Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:		1.00% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$10,000.00
Covered Risk 18:		1.00% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19:		1.00% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21:		1.00% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$5000.00

AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 - * land use
 - * improvements on the land
 - * land division
 - * environmental protection
 This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
 - * a notice of exercising the right appears in the public records
 - * on the Policy Date
 - * the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
 - * that are created, allowed, or agreed to by you
 - * that are known to you, but not to us, on the Policy Date – unless they appeared in the public records
 - * that result in no loss to you
 - * that first affect your title after the Policy Date – this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
 - * to any land outside the area specifically described and referred to in Item 3 of Schedule A
 - OR
 - * in streets, alleys, or waterways that touch your land
 This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

2006 ALTA LOAN POLICY (06-17-06) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

2006 ALTA OWNER'S POLICY (06-17-06) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10) EXCLUSIONS FROM COVERAGE

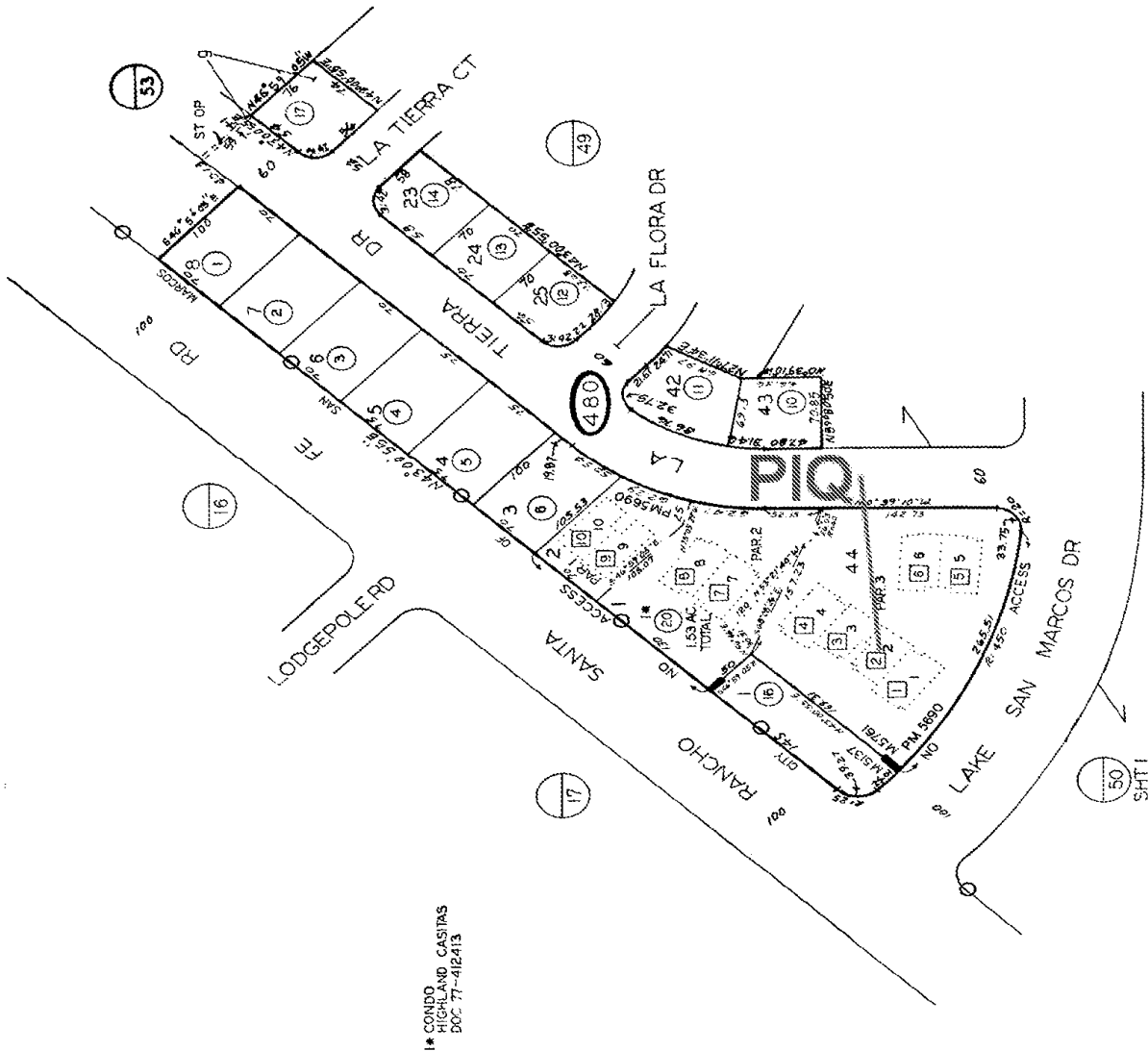
The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.

221-48



9/02/2006 EK

[illegible]

⊗

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

MAP 5761 - LAKE SAN MARCOS HIGHLANDS NO. 1
MAP 5137 - LAKE SAN MARCOS UNIT NO. 1 - LOT 1

NTY ASSOCIATES MAP 3K 221 PG 48.

EXHIBIT “3”

PURCHASE AGREEMENT

DocuSign Envelope ID: AD416263-8D10-4E9D-AF93-EC302C583D53



CALIFORNIA
ASSOCIATION
OF REALTORS®

COUNTER OFFER No. ONE

For use by Seller or Buyer. May not be used as a multiple counter offer.

C.A.R. Form CO, Revised 11/13

In re Bernstein, Dan/Patricia Chapter 7 Bk. 12:12-31622-WJ

This is a counter offer to the: ☒ California Residential Purchase Agreement, ☐ Counter Offer No. _____, or ☐ Other _____ ("Offer"),
dated 11/17/2014 on property known as 1026 La Tierra Dr., San Marcos, CA 92078 ("Property"),
between Walter/Marcelle Pueschel ("Buyer") and Lynda Bui, Chra. 7 Trustee ("Seller").
Date December 3, 2014

1. TERMS: The terms and conditions of the above referenced document are accepted subject to the following:
- A. Paragraphs in the Offer that require initials by all parties, but are not initialed by all parties, are excluded from the final agreement unless specifically referenced for inclusion in paragraph 1C of this or another Counter Offer or an addendum.
 - B. Unless otherwise agreed in writing, down payment and loan amount(s) will be adjusted in the same proportion as in the original Offer.
 - C. OTHER TERMS:
 - 1. Purchase price to be \$305,000, cash to seller.
 - 2. Property is being sold in AS IS condition with no expressed/implied warranties.
 - 3. Sale subject to Bankruptcy Court approval and overbid.
 - 4. Escrow to be with A&A Escrow, Beverly Hills. Title insurance with Fidelity Title.
 - 5. Seller will provide termite report but will perform no work.
 - 6. Buyers are made aware there are two separate counter offers, including theirs, currently outstanding.

D. The following attached addenda are incorporated into this Counter offer: ☐ Addendum No. _____

2. Expiration: This Counter Offer shall be deemed revoked and the deposits, if any, shall be returned:
- A. Unless by 5:00pm on the third Day After the date it is signed in paragraph 3 (if more than one signature then, the last signature date)(or by ☐ AM ☐ PM on _____ (date)) (i) it is signed in paragraph 4 by the Buyer or Seller to whom it is sent and (ii) a copy of the signed Counter Offer is personally received by the person making it or Richard Halderman Jr. who is authorized to receive it.
 - OR B. If the Buyer or Seller who made the Counter Offer withdraws it anytime prior to Acceptance (C.A.R. Form WOO may be used).
3. OFFER: BUYER OR SELLER MAKES THIS COUNTER OFFER ON THE TERMS ABOVE AND ACKNOWLEDGES RECEIPT OF A COPY.
☒ Buyer ☒ Seller
☐ Buyer ☐ Seller Lynda Tu, Bui, Chapter 7 Trustee Date 12/4/2014
Date _____
4. ACCEPTANCE: I/we accept the above Counter Offer (If checked ☒ SUBJECT TO THE ATTACHED COUNTER OFFER) and
acknowledge receipt of a Copy.
☒ Buyer ☒ Seller Walter/Marcelle Pueschel Date 12/4/14 Time 4 AM/PM
☐ Buyer ☐ Seller Marcelle P. Pueschel Date _____ Time _____ AM/PM

CONFIRMATION OF ACCEPTANCE:

B400DE5AB7F34E2...

(Initials) Confirmation of Acceptance: A Copy of Signed Acceptance was personally received by the maker of the Counter Offer, or that person's authorized agent as specified in paragraph 2A on (date) 12/4/14 at 5 AM/PM.
A binding Agreement is created when a Copy of Signed Acceptance is personally received by the maker of the Counter Offer, or that person's authorized agent whether or not confirmed in this document.

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Reviewed by _____ Date _____



CO REVISED 11/13 (PAGE 1 OF 1) Print Date BD Apr 14

EXHIBIT "3"

DocuSign Envelope ID: A2959CD0-4698-423B-9DBD-91C6C5AC8499



CALIFORNIA
ASSOCIATION
OF REALTORS®

CALIFORNIA
RESIDENTIAL PURCHASE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

For Use With Single Family Residential Property — Attached or Detached
(C.A.R. Form RPA-CA, Revised 4/13)

Date November 17, 2014

1. OFFER:

- A. THIS IS AN OFFER FROM Walter Pueschel, Marcelle Pueschel ("Buyer").
B. THE REAL PROPERTY TO BE ACQUIRED is described as 1026 La Tierra Dr., San Marcos, CA 92078
Assessor's Parcel No. 221-480-20-02, situated in
San Marcos, County of San Diego, California, ("Property").
C. THE PURCHASE PRICE offered is Three Hundred Thousand Dollars \$ 300,000.00

D. CLOSE OF ESCROW shall occur on _____ (date) (or ☒ 30 Days After Acceptance).

2. AGENCY:

- A. DISCLOSURE: Buyer and Seller each acknowledge prior receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
B. POTENTIALLY COMPETING BUYERS AND SELLERS: Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer representation agreement or separate document (C.A.R. Form DA). Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties of interest to this Buyer.
C. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:
Listing Agent Lido Pacific Asset Management (Print Firm Name) is the agent of (check one): ☒ the Seller exclusively; or ☐ both the Buyer and Seller.
Selling Agent Pagni Real Estate (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): ☒ the Buyer exclusively; or ☐ the Seller exclusively; or ☐ both the Buyer and Seller. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.

A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ 3,000.00

(1) Buyer shall deliver deposit directly to Escrow Holder by personal check, ☐ electronic funds transfer, ☐ other _____ within 3 business days after acceptance (or ☐ Other _____);

OR (2) (If checked) ☐ Buyer has given the deposit by personal check (or ☐ _____) to the agent submitting the offer (or to ☐ _____), made payable to _____. The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder (or ☐ into Broker's trust account) within 3 business days after Acceptance (or ☐ Other _____).

B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ _____ within _____ Days After Acceptance, or ☐ _____.

If a liquidated damages clause is incorporated into this Agreement, Buyer and Seller shall sign a separate liquidated damages clause (C.A.R. Form RID) for any increased deposit at the time it is Delivered.

C. LOAN(S):

(1) FIRST LOAN: in the amount of \$ _____

This loan will be conventional financing or, if checked, ☐ FHA, ☐ VA, ☐ Seller (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form PAA), ☐ Other _____. This loan shall be at a fixed rate not to exceed _____ % or, ☐ an adjustable rate loan with initial rate not to exceed _____ %. Regardless of the type of loan, Buyer shall pay points not to exceed _____ % of the loan amount.

(2) ☐ SECOND LOAN: in the amount of \$ _____

This loan will be conventional financing or, if checked, ☐ Seller (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form PAA), ☐ Other _____. This loan shall be at a fixed rate not to exceed _____ % or, ☐ an adjustable rate loan with initial rate not to exceed _____ %. Regardless of the type of loan, Buyer shall pay points not to exceed _____ % of the loan amount.

(3) FHA/VA: For any FHA or VA loan specified above, Buyer has 17 (or ☐ _____) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless otherwise agreed in writing.

D. ADDITIONAL FINANCING TERMS: _____

E. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of \$ 297,000.00 to be deposited with Escrow Holder within sufficient time to close escrow.

F. PURCHASE PRICE (TOTAL) \$ 300,000.00

Buyer's Initials (WP) (MS)

Seller's Initials ([Signature]) (_____)

SUBJECT TO COUNTER OFFER



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RPA-CA REVISED 4/13 (PAGE 1 OF 8)

Reviewed by _____ Date _____

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 1 OF 8)

Agent: MiYona Pagni Phone: 760.402.4495 Fax: 760.632.1984 Prepared using zipForm® software
Broker: Pagni Real Estate, 7668 El Camino Real, Suite 104-806 Carlsbad, CA 92009

EXHIBIT "3"

DocuSign Envelope ID: E4744B87-EBD0-4D9F-823B-A7B9300EC344

1026 La Tierra Dr.

Property Address: San Marcos, CA 92078

Date: November 17, 2014

G. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to 3H(1) shall, within 7 (or ☐) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (If checked, ☐ verification attached.)

H. LOAN TERMS:

(1) LOAN APPLICATIONS: Within 7 (or ☐) Days After Acceptance, Buyer shall Deliver to Seller a letter from lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in 3C above. (If checked, ☐ letter attached.)

(2) LOAN CONTINGENCY: Buyer shall act diligently and in good faith to obtain the designated loan(s). Obtaining the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. Buyer's contractual obligations to obtain and provide deposit, balance of down payment and closing costs are not contingencies of this Agreement.

(3) LOAN CONTINGENCY REMOVAL:

(i) Within 17 (or ☐) Days After Acceptance, Buyer shall, as specified in paragraph 14, in writing remove the loan contingency or cancel this Agreement;

OR (ii) (if checked) ☐ the loan contingency shall remain in effect until the designated loans are funded.

(4) ☒ NO LOAN CONTINGENCY (If checked): Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

I. APPRAISAL CONTINGENCY AND REMOVAL: This Agreement is (or, if checked, ☒ is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the specified purchase price. If there is a loan contingency, Buyer's removal of the loan contingency shall be deemed removal of this appraisal contingency (or, ☐ if checked, Buyer shall, as specified in paragraph 14B(3), in writing remove the appraisal contingency or cancel this Agreement within 17 (or ☐) Days After Acceptance). If there is no loan contingency, Buyer shall, as specified in paragraph 14B(3), in writing remove the appraisal contingency or cancel this Agreement within 17 (or ☐) Days After Acceptance.

J. ☒ ALL CASH OFFER (If checked): Buyer shall, within 7 (or ☐) Days After Acceptance, Deliver to Seller written verification of sufficient funds to close this transaction. (If checked, ☐ verification attached.)

K. BUYER STATED FINANCING: Seller has relied on Buyer's representation of the type of financing specified (including but not limited to, as applicable, amount of down payment, contingent or non contingent loan, or all cash). If Buyer seeks alternate financing, (i) Seller has no obligation to cooperate with Buyer's efforts to obtain such financing, and (ii) Buyer shall also pursue the financing method specified in this Agreement. Buyer's failure to secure alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. ALLOCATION OF COSTS (If checked): Unless otherwise specified here, in writing, this paragraph only determines who is to pay for the inspection, test or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.

A. INSPECTIONS AND REPORTS:

(1) ☐ Buyer ☒ Seller shall pay for an inspection and report for wood destroying pests and organisms ("Wood Pest Report") prepared by Licensed Pest Control Company a registered structural pest control company.

(2) ☐ Buyer ☐ Seller shall pay to have septic or private sewage disposal systems inspected _____.

(3) ☐ Buyer ☐ Seller shall pay to have domestic wells tested for water potability and productivity _____.

(4) ☐ Buyer ☒ Seller shall pay for a natural hazard zone disclosure report prepared by Seller's Choice _____.

(5) ☐ Buyer ☐ Seller shall pay for the following inspection or report _____.

(6) ☐ Buyer ☐ Seller shall pay for the following inspection or report _____.

B. GOVERNMENT REQUIREMENTS AND RETROFIT:

(1) ☐ Buyer ☒ Seller shall pay for smoke detector installation and/or water heater bracing, if required by Law. Prior to Close Of Escrow, Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless exempt.

(2) ☐ Buyer ☒ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards, inspections and reports if required as a condition of closing escrow under any Law. _____.

C. ESCROW AND TITLE:

(1) ☒ Buyer ☒ Seller shall pay escrow fee Each to pay own _____.
Escrow Holder shall be Seller's Choice _____.

(2) ☐ Buyer ☒ Seller shall pay for owner's title insurance policy specified in paragraph 12E _____.
Owner's title policy to be issued by Seller's Choice _____.

(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

D. OTHER COSTS:

(1) ☐ Buyer ☒ Seller shall pay County transfer tax or fee _____.

(2) ☐ Buyer ☐ Seller shall pay City transfer tax or fee _____.

(3) ☐ Buyer ☒ Seller shall pay Homeowner's Association ("HOA") transfer fee _____.

(4) ☐ Buyer ☒ Seller shall pay HOA document preparation fees _____.

(5) ☐ Buyer ☐ Seller shall pay for any private transfer fee _____.

(6) ☐ Buyer ☒ Seller shall pay the cost, not to exceed \$ 600.00 _____, of a one-year home warranty plan, issued by Buyer's Protection Group _____, with the following optional coverages:

☒ Air Conditioner ☐ Pool/Spa ☒ Code and Permit upgrade ☒ Other: washer, dryer, fridge _____.

Buyer is informed that home warranty plans have many optional coverages in addition to those listed above. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.

(7) ☐ Buyer ☐ Seller shall pay for _____.

(8) ☐ Buyer ☐ Seller shall pay for _____.

Buyer's Initials (WP) (MP)

SUBJECT TO COUNTER OFFER

☒ Seller's Initials (SP) (_____)

Reviewed by _____ Date _____



RPA-CA REVISED 4/13 (PAGE 2 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 2 OF 8)

1026 La Tierra

EXHIBIT "3"

DocuSign Envelope ID: E4744B87-EBD0-4D9F-823B-A7B9300EC344

1026 La Tierra Dr.

Property Address: San Marcos, CA 92078

Date: November 17, 2014

5. CLOSING AND POSSESSION:

- A. Buyer intends (or ☐ does not intend) to occupy the Property as Buyer's primary residence.
- B. Seller-occupied or vacant property: Possession shall be delivered to Buyer at 5 PM or (☐ _____ ☐ AM ☐ PM) on the date of Close Of Escrow; ☐ on _____; or ☐ no later than _____ Days After Close Of Escrow. If transfer of title and possession do not occur at the same time, Buyer and Seller are advised to: (i) enter into a written occupancy agreement (C.A.R. Form PAA, paragraph 2); and (ii) consult with their insurance and legal advisors.
- C. Tenant-occupied property: (i) Property shall be vacant at least 5 (or ☐ _____) Days Prior to Close Of Escrow, unless otherwise agreed in writing. Note to Seller: If you are unable to deliver Property vacant in accordance with rent control and other applicable Law, you may be in breach of this Agreement.
- OR (ii) (if checked) ☐ Tenant to remain in possession. (C.A.R. Form PAA, paragraph 3)
- D. At Close Of Escrow, (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale, and (ii) Seller shall Deliver to Buyer available Copies of warranties. Brokers cannot and will not determine the assignability of any warranties.
- E. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys and/or means to operate all locks, mailboxes, security systems, alarms and garage door openers. If Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.

6. STATUTORY DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:

- A. (1) Seller shall, within the time specified in paragraph 14A, Deliver to Buyer, if required by Law: (i) Federal Lead-Based Paint Disclosures (C.A.R. Form FLD) and pamphlet ("Lead Disclosures"); and (ii) disclosures or notices required by sections 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement ("TDS"), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or SSD).
- (2) Buyer shall, within the time specified in paragraph 14B(1), return Signed Copies of the Statutory and Lead Disclosures to Seller.
- (3) In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer.
- (4) If any disclosure or notice specified in 6A(1), or subsequent or amended disclosure or notice is Delivered to Buyer after the offer is Signed, Buyer shall have the right to cancel this Agreement within 3 Days After Delivery in person, or 5 Days After Delivery by deposit in the mail, by giving written notice of cancellation to Seller or Seller's agent.
- (5) Note to Buyer and Seller: Waiver of Statutory and Lead Disclosures is prohibited by Law.
- B. NATURAL AND ENVIRONMENTAL HAZARDS: Within the time specified in paragraph 14A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guides (and questionnaire) and environmental hazards booklet; (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- C. WITHHOLDING TAXES: Within the time specified in paragraph 14A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).
- D. MEGAN'S LAW DATABASE DISCLOSURE: Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)
- E. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES: This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.

7. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:

- A. SELLER HAS: 7 (or ☐ _____) Days After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form SPQ or SSD).
- B. If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has 3 (or ☐ _____) Days After Acceptance to request from the HOA (C.A.R. Form HOA): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 14B(3).

8. ITEMS INCLUDED IN AND EXCLUDED FROM PURCHASE PRICE:

- A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in 8B or C.
- B. ITEMS INCLUDED IN SALE:
- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, private integrated telephone systems, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water softeners, water purifiers, security systems/alarms; (If checked) ☒ stove(s), ☒ refrigerator(s);

Buyer's Initials (WP) (MP)

RPA-CA REVISED 4/13 (PAGE 3 OF 8)

SUBJECT TO COUNTER OFFER

(X) Seller's Initials ([Signature]) (_____)

Reviewed by _____ Date _____



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 3 OF 8)

1026 La Tierra

EXHIBIT "3"

1026 La Tierra Dr.

Property Address: San Marcos, CA 92078

Date: November 17, 2014

(3) The following additional items: washer, dryer

(4) Seller represents that all items included in the purchase price, unless otherwise specified, are owned by Seller.

(5) All items included shall be transferred free of liens and without Seller warranty.

- C. **ITEMS EXCLUDED FROM SALE:** Unless otherwise specified, audio and video components (such as flat screen TVs and speakers) are excluded if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component is attached to the Property; and

9. **CONDITION OF PROPERTY:** Unless otherwise agreed: (i) the Property is sold (a) in its PRESENT physical ("as-is") condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.

A. Seller shall, within the time specified in paragraph 14A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.

B. Buyer has the right to inspect the Property and, as specified in paragraph 14B, based upon information discovered in those inspections: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.

C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.

10. **BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**

A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 14B. Within the time specified in paragraph 14B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms; (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property; and (v) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.

B. Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 14B, complete Buyer Investigations and, either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.

C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.

D. **Buyer indemnity and Seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Nonresponsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

11. **SELLER DISCLOSURES; ADDENDA; ADVISORIES; OTHER TERMS:**

A. **Seller Disclosures (if checked):** Seller shall, within the time specified in paragraph 14A, complete and provide Buyer with a:

☒ Seller Property Questionnaire (C.A.R. Form SPQ) OR ☐ Supplemental Contractual and Statutory Disclosure (C.A.R. Form SSD)

B. **Addenda (if checked):** ☐ Addendum # (C.A.R. Form ADM)

☒ Wood Destroying Pest Inspection and Allocation of Cost Addendum (C.A.R. Form WPA)

☐ Purchase Agreement Addendum (C.A.R. Form PAA)

☐ Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)

☐ Short Sale Addendum (C.A.R. Form SSA)

☒ Other Court Confirmation Addendum

C. **Advisories (if checked):**

☐ Probate Advisory (C.A.R. Form PAK)

☒ Buyer's Inspection Advisory (C.A.R. Form BIA)

☐ Trust Advisory (C.A.R. Form TA)

☒ Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)

☐ REO Advisory (C.A.R. Form REO)

D. **Other Terms:**

12. **TITLE AND VESTING:**

A. Within the time specified in paragraph 14, Buyer shall be provided a current preliminary title report, which shall include a search of the General Index, Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information. The preliminary report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the preliminary report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 14B.

B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except: (i) monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.

C. Within the time specified in paragraph 14A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

E. Buyer shall receive a CLTA/ALTA Homeowner's Policy of Title Insurance. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and pay any increase in cost.

SUBJECT TO COUNTER OFFER

Buyer's Initials (WP) (MP)Seller's Initials (AS) ()

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Reviewed by Date

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 4 OF 8)

1026 La Tierra

EXHIBIT "3"

DocuSign Envelope ID: E4744B87-EBD0-4D9F-823B-A7B9300EC344

1026 La Tierra Dr.

Property Address: San Marcos, CA 92078

Date: November 17, 2014

13. SALE OF BUYER'S PROPERTY:

A. This Agreement is NOT contingent upon the sale of any property owned by Buyer.

OR B. ☐ (If checked): The attached addendum (C.A.R. Form COP) regarding the contingency for the sale of property owned by Buyer is incorporated into this Agreement.

14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

A. SELLER HAS: 7 (or ☐) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 4, 6A, B and C, 7A, 9A, 11A and B, and 12A. Buyer may give Seller a Notice to Seller to Perform (C.A.R. Form NSP) if Seller has not Delivered the items within the time specified.

B. (1) BUYER HAS: 17 (or ☐) Days After Acceptance, unless otherwise agreed in writing, to:

(i) complete all Buyer Investigations; approve all disclosures, reports and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and

(ii) Deliver to Seller Signed Copies of Statutory and Lead Disclosures Delivered by Seller in accordance with paragraph 6A.

(2) Within the time specified in 14B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests.

(3) By the end of the time specified in 14B(1) (or as otherwise specified in this Agreement), Buyer shall, Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in 14A, then Buyer has 5 (or ☐) Days After Delivery of any such items, or the time specified in 14B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

(4) Continuation of Contingency: Even after the end of the time specified in 14B(1) and before Seller cancels, if at all, pursuant to 14C, Buyer retains the right to either (i) in writing remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to 14C(1).

C. SELLER RIGHT TO CANCEL:

(1) Seller right to Cancel; Buyer Contingencies: If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP) may cancel this Agreement. In such event, Seller shall authorize return of Buyer's deposit.

(2) Seller right to Cancel; Buyer Contract Obligations: Seller, after first Delivering to Buyer a NBP may cancel this Agreement for any of the following reasons: (i) if Buyer fails to deposit funds as required by 3A or 3B; (ii) if the funds deposited pursuant to 3A or 3B are not good when deposited; (iii) if Buyer fails to Deliver a notice of FHA or VA costs or terms as required by 3C(3) (C.A.R. Form FVA); (iv) if Buyer fails to Deliver a letter as required by 3H; (v) if Buyer fails to Deliver verification as required by 3G or 3J; (vi) if Seller reasonably disapproves of the verification provided by 3G or 3J; (vii) if Buyer fails to return Statutory and Lead Disclosures as required by paragraph 6A(2); or (viii) if Buyer fails to sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 25. In such event, Seller shall authorize return of Buyer's deposit.

(3) Notice To Buyer To Perform: The NBP shall: (i) be in writing; (ii) be signed by Seller; and (iii) give Buyer at least 2 (or ☐) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for Buyer to remove a contingency or cancel this Agreement or meet an obligation specified in 14C(2).

D. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for inability to obtain financing.

E. CLOSE OF ESCROW: Before Seller or Buyer may cancel this Agreement for failure of the other party to close escrow pursuant to this Agreement, Seller or Buyer must first Deliver to the other a demand to close escrow (C.A.R. Form DCE).

F. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, Buyer and Seller agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Release of funds will require mutual Signed release instructions from Buyer and Seller, judicial decision or arbitration award. A Buyer or Seller may be subject to a civil penalty of up to \$1,000 for refusal to sign such instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).

15. REPAIRS: Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of receipts and statements to Buyer prior to final verification of condition.

16. FINAL VERIFICATION OF CONDITION: Buyer shall have the right to make a final inspection of the Property within 5 (or ☐) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 9; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).

17. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS: Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.

Buyer's Initials (WP) (MP)

☒ Seller's Initials (SP) ()



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Reviewed by Date

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 5 OF 8)

1026 La Tierra

EXHIBIT "3"

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1026 La Tierra Dr.

Property Address: San Marcos, CA 92078

Date: November 17, 2014

18. **SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
19. **MULTIPLE LISTING SERVICE ("MLS"):** Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.
20. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
21. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 26A.
22. **DEFINITIONS:** As used in this Agreement:
- A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a party and is delivered to and personally received by the other party or that party's authorized agent in accordance with the terms of this offer or a final counter offer.
 - B. "C.A.R. Form" means the specific form referenced or another comparable form agreed to by the parties.
 - C. "Close Of Escrow" means the date the grant deed, or other evidence of transfer of title, is recorded.
 - D. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
 - E. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
 - F. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59PM on the final day.
 - G. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
 - H. "Deliver", "Delivered" or "Delivery", means and shall be effective upon (i) personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in paragraph D of the section titled Real Estate Brokers on page 8, regardless of the method used (i.e. messenger, mail, email, fax, other); OR (ii) if checked, ☐ per the attached addendum (C.A.R. Form RDN).
 - I. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other.
 - J. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
 - K. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
 - L. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.
23. **BROKER COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
24. **JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: 1, 3, 4, 6C, 11B and D, 12, 13B, 14F, 17, 22, 23, 24, 28, 30 and paragraph D of the section titled Real Estate Brokers on page 8. If a Copy of the separate compensation agreement(s) provided for in paragraph 23, or paragraph D of the section titled Real Estate Brokers on page 8 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provisions upon Escrow Holder's request. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow.
 - B. A Copy of this Agreement shall be delivered to Escrow Holder within 3 business days after Acceptance (or ☐ _____). Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement.
 - C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 23 and paragraph D of the section titled Real Estate Brokers on page 8. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 23, respectively, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement. Escrow Holder shall immediately notify Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
 - D. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 2 business days after mutual execution of the amendment.

Buyer's Initials (DS) (MP)

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SUBJECT TO COUNTER OFFER

Seller's Initials (DS) (MP)
Reviewed by _____ Date _____



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1026 La Tierra Dr.

Property Address: San Marcos, CA 92078

Date: November 17, 2014

25. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT TIME OF THE INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION FOR ANY INCREASED DEPOSIT (C.A.R. FORM RID). *MP*

Buyer's Initials WP / MP

Seller's Initials [Signature] /

26. DISPUTE RESOLUTION:

A. MEDIATION: Buyer and Seller agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Buyer and Seller also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 26C.

B. ARBITRATION OF DISPUTES:

Buyer and Seller agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. Buyer and Seller also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the parties mutually agree to a different arbitrator. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 26C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials WP / MP

Seller's Initials [Signature] /

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

(1) EXCLUSIONS: The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver nor violation of the mediation and arbitration provisions.

(2) BROKERS: Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

27. TERMS AND CONDITIONS OF OFFER:

This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initiated by all parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the above confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

28. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the laws of the State of California. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.

SUBJECT TO COUNTER OFFER

Buyer's Initials (WP) (MP)



Seller's Initials ([Signature]) ()

Reviewed by [Signature]

Date



RPA-CA REVISED 4/13 (PAGE 7 OF 8)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 7 OF 8)

1026 La Tierra

EXHIBIT "3"

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1026 La Tierra Dr.

Property Address: San Marcos, CA 92078

Date: November 17, 2014

29. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit shall be returned unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by Yo Pagni, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or, if checked, ☒ by ☐ AM ☒ PM, on November 19, 2014 (date)).

Date 11/17/2014 Signed by:

BUYER Walter Pueschel

Walter Pueschel
(Print name)

(Address)

Date 11/17/2014 Signed by:

BUYER Marcelle Pueschel

Marcelle Pueschel
(Print name)

30. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer, agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

☒ (If checked) SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form CO) DATED: December 3, 2014
Date December 9, 2014

☒ SELLER Lynda T. Bul, Chapter 7 Trustee
(Print name)

(Address)

SELLER

(Print name)

SUBJECT TO COUNTER OFFER

(/) CONFIRMATION OF ACCEPTANCE: A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) at ☐ AM ☐ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

REAL ESTATE BROKERS:

- A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
- B. Agency relationships are confirmed as stated in paragraph 2.
- C. If specified in paragraph 3A, Agent who submitted the offer for Buyer acknowledges receipt of deposit.
- D. COOPERATING BROKER COMPENSATION: Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow: (i) the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS; or (ii) ☐ (if checked) the amount specified in a separate written agreement (C.A.R. Form CBC) between Listing Broker and Cooperating Broker. Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required unless an exemption exists.

Real Estate Broker (Selling Firm) Pagni Real Estate BRE Lic. # 01896499
By Miyona Pagni BRE Lic. # 01344038 Date 11/17/2014
Address 7658 El Camino Real #104-806 City Carlsbad State CA Zip 92009
Telephone (760) 402-4495 Fax (760) 632-1984 E-mail yopagni@aol.com

Real Estate Broker (Listing Firm) Lido Pacific Asset Management BRE Lic. # _____
By _____ BRE Lic. # _____ Date _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), counter offer number _____ ☐ Seller's Statement of Information and _____, and agrees to act as Escrow Holder subject to paragraph 24 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is _____
Escrow Holder _____ Escrow # _____
By _____ Date _____
Address _____
Phone/Fax/E-mail _____
Escrow Holder is licensed by the California Department of ☐ Corporations, ☐ Insurance, ☐ Real Estate. License # _____

PRESENTATION OF OFFER: (_____) Listing Broker presented this offer to Seller on _____ (date).
Broker or Designee Initials _____

REJECTION OF OFFER: (_____) (_____) No counter offer is being made. This offer was rejected by Seller on _____ (date).
Seller's Initials _____

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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____
Broker or Designee _____ Date _____



REVISION DATE 4/13

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 8 OF 8)

1026 La Tierra

EXHIBIT "3"



CALIFORNIA
ASSOCIATION
OF REALTORS®

BUYER'S INSPECTION ADVISORY

(C.A.R. Form BIA-A, Revised 10/02)

Property Address: 1026 La Tierra Dr., San Marcos, CA 92078

("Property").

A. IMPORTANCE OF PROPERTY INVESTIGATION: The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. For this reason, you should conduct thorough investigations of the Property personally and with professionals who should provide written reports of their investigations. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.

B. BUYER RIGHTS AND DUTIES: You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. The purchase agreement gives you the right to investigate the Property. If you exercise this right, and you should, you must do so in accordance with the terms of that agreement. This is the best way for you to protect yourself. It is extremely important for you to read all written reports provided by professionals and to discuss the results of inspections with the professional who conducted the inspection. You have the right to request that Seller make repairs, corrections or take other action based upon items discovered in your investigations or disclosed by Seller. If Seller is unwilling or unable to satisfy your requests, or you do not want to purchase the Property in its disclosed and discovered condition, you have the right to cancel the agreement if you act within specific time periods. If you do not cancel the agreement in a timely and proper manner, you may be in breach of contract.

C. SELLER RIGHTS AND DUTIES: Seller is required to disclose to you material facts known to him/her that affect the value or desirability of the Property. However, Seller may not be aware of some Property defects or conditions. Seller does not have an obligation to inspect the Property for your benefit nor is Seller obligated to repair, correct or otherwise cure known defects that are disclosed to you or previously unknown defects that are discovered by you or your inspectors during escrow. The purchase agreement obligates Seller to make the Property available to you for investigations.

D. BROKER OBLIGATIONS: Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as soil stability, geologic or environmental conditions, hazardous or illegal controlled substances, structural conditions of the foundation or other improvements, or the condition of the roof, plumbing, heating, air conditioning, electrical, sewer, septic, waste disposal, or other system. The only way to accurately determine the condition of the Property is through an inspection by an appropriate professional selected by you. If Broker gives you referrals to such professionals, Broker does not guarantee their performance. You may select any professional of your choosing. In sales involving residential dwellings with no more than four units, Brokers have a duty to make a diligent visual inspection of the accessible areas of the Property and to disclose the results of that inspection. However, as some Property defects or conditions may not be discoverable from a visual inspection, it is possible Brokers are not aware of them. If you have entered into a written agreement with a Broker, the specific terms of that agreement will determine the nature and extent of that Broker's duty to you. **YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**

E. YOU ARE ADVISED TO CONDUCT INVESTIGATIONS OF THE ENTIRE PROPERTY, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

- 1. GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof, plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa, other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property. (Structural engineers are best suited to determine possible design or construction defects, and whether improvements are structurally sound.)
- 2. SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. (Professionals such as appraisers, architects, surveyors and civil engineers are best suited to determine square footage, dimensions and boundaries of the Property.)
- 3. WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms and other infestation or infection. Inspection reports covering these items can be separated into two sections: Section 1 identifies areas where infestation or infection is evident. Section 2 identifies areas where there are conditions likely to lead to infestation or infection. A registered structural pest control company is best suited to perform these inspections.
- 4. SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage. (Geotechnical engineers are best suited to determine such conditions and causes and remedies.)

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BIA-A REVISED 10/02 (PAGE 1 OF 2)

Buyer's Initials (WP) (MP)
Seller's Initials (AP) ()
Reviewed by _____ Date _____



SUBJECT TO COUNTER OFFER

BUYER'S INSPECTION ADVISORY (BIA-A PAGE 1 OF 2)

Agent: MiYona Pagni

Phone: 760.402.4495

Fax: 760.632.1984

Prepared using zipForm® software

Broker: Pagni Real Estate, 7668 El Camino Real, Suite 104-806 Carlsbad, CA 92009

DocuSign Envelope ID: E4744B87-EBD0-4D9F-823B-A7B9300EC344

Property Address: 1026 La Tierra Dr., San Marcos, CA 92078

Date: November 17, 2014

5. **ROOF:** Present condition, age, leaks, and remaining useful life. (Roofing contractors are best suited to determine these conditions.)
6. **POOL/SPA:** Cracks, leaks or operational problems. (Pool contractors are best suited to determine these conditions.)
7. **WASTE DISPOSAL:** Type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
8. **WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components.
9. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants). (For more information on these items, you may consult an appropriate professional or read the booklets "Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants," "Protect Your Family From Lead in Your Home" or both.)
10. **EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood. (A Geologist or Geotechnical Engineer is best suited to provide information on these conditions.)
11. **FIRE, HAZARD AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies. (An insurance agent is best suited to provide information on these conditions.)
12. **BUILDING PERMITS, ZONING AND GOVERNMENTAL REQUIREMENTS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size. (Such information is available from appropriate governmental agencies and private information providers. Brokers are not qualified to review or interpret any such information.)
13. **RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants; and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements. (Government agencies can provide information about these restrictions and other requirements.)
14. **SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property. Compliance requirements differ from city to city and county to county. Unless specifically agreed, the Property may not be in compliance with these requirements. (Local government agencies can provide information about these restrictions and other requirements.)
15. **NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS:** Neighborhood or area conditions, including schools, proximity and adequacy of law enforcement, crime statistics, the proximity of registered felons or offenders, fire protection, other government services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (x) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyer is encouraged to read it carefully.

Walter Poeschel 11/17/2014
Buyer Signature Date
Walter Poeschel

Marcelle Poeschel 11/17/2014
Buyer Signature Date
Marcelle Poeschel

Seller Signature Date

(X) [Signature] (X) [Signature]
Seller Signature Date

SUBJECT TO COUNTER OFFER

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CALIFORNIA
ASSOCIATION
OF REALTORS®

**WOOD DESTROYING PEST INSPECTION AND
ALLOCATION OF COST ADDENDUM**
(C.A.R. Form WPA, Revised 11/12)

This is an addendum to the ☒ California Residential Purchase Agreement or ☐ Other _____
("Agreement"), dated November 17, 2014,
on property known as 1026 La Tierra Dr., San Marcos, CA 92078

between _____ ("Property"),
and Walter Pueschel, Marcelle Pueschel ("Buyer"),
and _____ ("Seller").

1. Unless otherwise specified, the Agreement permits the Buyer to inspect the property and investigate its condition. One of the inspections the Buyer may obtain is for wood destroying pests and organisms "Wood Pest Report". Whether obtained and paid for by Buyer or Seller, Buyer's review and approval of a Wood Pest Report would generally be covered by the inspection contingency of the Agreement. Before Buyer removes or waives the inspection contingency, or other contingency specifically related to a Wood Pest Report, Buyer may cancel the Agreement if dissatisfied with the condition described in the Wood Pest Report, even if this Wood Pest Addendum is not made part of the Agreement.
2. A. The Wood Pest Report shall be paid for and prepared as specified in the Agreement, or if checked, ☐ Buyer ☒ Seller shall pay for a Wood Pest Report prepared by Licensed Pest Control Company, a registered Structural Pest Control company.
B. The Wood Pest Report shall cover the main building and attached structures and, if checked: ☐ detached garages and carports, ☐ detached decks, ☒ the following other structures on the Property: covered patio. The Wood Pest Report shall not include roof coverings. If the Property is a unit in a condominium or other common interest subdivision, the Wood Pest Report shall include only the separate interest and any exclusive-use areas being transferred, and shall not include common areas. Water tests of shower pans on upper level units may not be performed unless the owners of property below the shower consent.
C. The Wood Pest Report shall be separated into sections for evident infestation or infection (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
(1) (Section 1) ☐ Buyer ☒ Seller shall pay for work recommended to correct "Section 1" conditions described in the Wood Pest Report and the cost of inspection, entry and closing of those inaccessible areas where active infestation or infection is discovered.
(2) (Section 2) ☒ Buyer ☐ Seller shall pay for work recommended to correct "Section 2" conditions described in the Wood Pest Report if requested by Buyer.
D. If the Wood Pest Report identifies inaccessible areas, and Buyer requests inspection of those inaccessible areas, the person identified in C1 shall pay for the cost of entry, inspection and closing of only those inaccessible areas where Section 1 conditions are discovered and Buyer shall pay for the cost of entry, inspection and closing of all other inaccessible areas.
E. Seller shall Deliver to Buyer, prior to Close Of Escrow, a written pest control certification ("Certification") showing that no infestation or infection is found or that required corrective work is completed. If paragraph 2A does not refer to a specific registered Structural Pest Control company and Seller obtains more than one Wood Pest Report pursuant to this Addendum, Seller may choose which Wood Pest Report to use as the basis of the Certification provided that Seller Delivers to Buyer all Wood Pest Reports obtained by Seller before Buyer removes any contingency for Wood Pest inspection.

By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Addendum.

Date November 17, 2014

Buyer Walter Pueschel

Buyer Marcelle Pueschel

Marcelle Pueschel

Date 12/4/14
Seller [Signature]

Seller

SUBJECT TO COUNTER OFFER

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Reviewed by _____ Date _____

WPA REVISED 11/12 (PAGE 1 OF 1)

WOOD DESTROYING PEST INSPECTION AND ALLOCATION OF COST ADDENDUM (WPA PAGE 1 OF 1)

Agent: MiYona Pagni

Phone: 760.402.4495

Fax: 760.632.1984

Prepared using zipForm® software

Broker: Pagni Real Estate, 7668 El Camino Real, Suite 104-806 Carlsbad, CA 92009

EXHIBIT "3"

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CALIFORNIA
ASSOCIATION
OF REALTORS®

COURT CONFIRMATION ADDENDUM

(C.A.R. Form CCA, 11/12)

This is an addendum to the ☒ California Residential Purchase Agreement, ☐ Counter Offer No. _____, ☐ Other _____
("Agreement"), dated November 17, 2014, on
property known as 1026 La Tierra Dr., San Marcos, CA 92078 ("Property"),
between Walter Pueschel, Marcelle Pueschel ("Buyer"),
and _____ ("Seller").

The Agreement is contingent upon court confirmation on or before Jan December 23, 2014 (date). If court confirmation is not
obtained by that date, Buyer may cancel the Agreement in writing. Court confirmation may be required in probate, conservatorship,
guardianship, receivership, bankruptcy, divorce or other proceedings. The court may allow open, competitive bidding, resulting in the
Property being sold to the highest bidder. Broker recommends that Buyer appear at the court confirmation hearing. Buyer understands
that (i) Broker and others may continue to market the Property; and (ii) Broker may represent other competitive bidders prior to and at
the court confirmation.

By signing below Buyer and Seller acknowledge that each has read, understands, has received a copy of and agrees to the terms of this
Court Confirmation Addendum.

Date 11/17/2014

Date 12/4/14

DocuSigned by:

Buyer

Walter Pueschel

Buyer

Marcelle Pueschel

Marcelle Pueschel

Seller

Seller

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CCA 11/12 (PAGE 1 OF 1)

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COURT CONFIRMATION ADDENDUM (CCA PAGE 1 OF 1)

Agent: MiYona Pagni Phone: 760.402.4495 Fax: 760.632.1984 Prepared using zipForm® software
Broker: Pagni Real Estate, 7668 El Camino Real, Suite 104-806 Carlsbad, CA 92009

EXHIBIT "3"



CALIFORNIA
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**DISCLOSURE AND CONSENT FOR
REPRESENTATION OF MORE THAN ONE
BUYER OR SELLER**
(C.A.R. Form DA, 11/06)

A real estate broker, whether a corporation, partnership or sole proprietorship, ("Broker") may represent more than one buyer or seller provided the Broker has made a disclosure and the principals have given their consent. This multiple representation can occur through an individual licensed as a broker or through different associate licensees acting for the Broker. The associates licensees may be working out of the same or different office locations.

Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Buyer and Seller understand that Broker may represent more than one buyer or seller and even both buyer and seller on the same transaction

If Seller is represented by Broker, Seller acknowledges that Broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both Seller and Buyer in that transaction.

If Buyer is represented by Broker, Buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both Buyer and Seller with regard to that property.

In the event of dual agency, Seller and Buyer agree that: (a) Broker, without the prior written consent of the Buyer, will not disclose to Seller that the Buyer is willing to pay a price greater than the offered price; (b) Broker, without the prior written consent of the Seller, will not disclose to the Buyer that Seller is willing to sell property at a price less than the listing price; and (c) other than as set forth in (a) and (b) above, a Dual Agent is obligated to disclose known facts materially affecting the value or desirability of the property to both parties.

NON CONFIDENTIALITY OF OFFERS: Buyer is advised that Seller or Listing Agent may disclose the existence, terms, or conditions of Buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the Listing Agent's marketing strategy and the instructions of the Seller.

Seller and/or Buyer acknowledges reading and understanding this Disclosure and Consent for Representation of More Than One Buyer or Seller and agrees to the dual agency possibility disclosed.

☐ Seller ☒ Buyer Walter Puschel Date 11/17/2014
DocuSigned by: Walter Puschel

☐ Seller ☒ Buyer Marcelle Puschel Date 11/17/2014
DocuSigned by: Marcelle Puschel

Real Estate Broker (Firm) Pagni Real Estate BRE Lic # 01896499

By MilYona Pagni BRE Lic # 01344038 Date 11/17/2014
DocuSigned by: MilYona Pagni

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DA 11/06 (PAGE 1 OF 1)

REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (DA PAGE 1 OF 1)

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Broker: Pagni Real Estate, 7668 El Camino Real, Suite 104-806 Carlsbad, CA 92009



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CALIFORNIA
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**DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIP**

(Selling Firm to Buyer)
(As required by the Civil Code)
(C.A.R. Form AD, Revised 11/12)

☐ (If checked) This form is being provided in connection with a transaction for a leaseholder interest in a dwelling exceeding one year as per Civil Code section 2079.13(j) and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE

ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant Discussed by: Walter Puschel Date 11/17/2014

☒ Buyer ☐ Seller ☐ Landlord ☐ Tenant Discussed by: Marcelle Puschel Date 11/17/2014

Agent Discussed by: Pagni Real Estate BRE Lic. # 01896499
Real Estate Broker (Firm)

By: Miyona Pagni BRE Lic. # 01344038 Date 11/17/2014
3BFC228E9D4E0 (Salesperson or Broker-Associate) Miyona Pagni

Agency Disclosure Compliance (Civil Code §2079.14):

- When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant.
- When Seller/Landlord and Buyer/Tenant are represented by different brokerage companies: (i) the Listing Agent shall have one AD form signed by Seller/Landlord, and (ii) the Buyer's/Tenant's Agent shall have one AD form signed by Buyer/Tenant and either that same or a different AD form presented to Seller/Landlord for signature prior to presentation of the offer. If the same form is used, Seller may sign here.

Seller/Landlord 12-4-14 Date 12-4-14 Seller/Landlord 12-4-14 Date

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AD REVISED 11/12 (PAGE 1 OF 2)

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

Agent: Miyona Pagni Phone: 760.402.4495 Fax: 760.632.1984 Prepared using zipForm® software
Broker: Pagni Real Estate, 7668 El Camino Real, Suite 104-806 Carlsbad, CA 92009

EXHIBIT "3"

CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (f) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent which becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property which constitutes or is improved with one to four dwelling units, any leasehold in this type of property exceeding one year's duration, and mobile homes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (n) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (o) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE, SAMPLE ONLY)

(Name of Listing Agent)

is the agent of (check one): ☐ the seller exclusively; or ☐ both the buyer and seller.

(DO NOT COMPLETE, SAMPLE ONLY)

(Name of Selling Agent if not the same as the Listing Agent)

is the agent of (check one): ☐ the buyer exclusively; or ☐ the seller exclusively; or ☐ both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.



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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)



1026 La Tierra

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